

Council Meeting of  
July 26, 2011

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**PUBLIC HEARING**

Members of the Council:

**SUBJECT:** Consider modification of a previously approved Precise Plan of Development - City Council Resoluton No. 2010-92 (PRE09-00007) to remove Condition Number 14 relating to permanent structures and Condition Number 15 relating to vegetation of approving first and second story additions to an existing single family residence on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro.

**MOD11-00006 (PRE09-00007): Jim & Betsy Delurgio**

**Expenditure: None**

**RECOMMENDATION:**

- 1) Deny the Modification to previously approved Precise Plan of Development – City Council Resolution No. 2010-92 (PRE09-00007) to remove Condition Number 14 relating to permanent structures and Condition Number 15 relating to vegetation; and
- 2) Adopt a RESOLUTION denying the Modification and preserving all conditions of approval of City Council Resolution No. 2010-92 for Precise Plan of Development approving first and second story additions to an existing single family residence on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro.

**Funding:** Not applicable.

**BACKGROUND:**

The property is located at the end of the cul-de-sac on Via El Toro and is currently developed with a one-story residence with attached two-car garage. On July 20, 2010, the City Council approved PRE09-00007 for first and second story additions to an existing one story residence. On August 24, 2010, the City Council adopted City Council Resolution No. 2010-82 reflecting approval of PRE09-00007. On September 21, 2010, the City Council repealed City Council Resolution No. 2010-82 and adopted City Council Resolution No. 2010-92. The reason that Resolution No. 2010-82 was repealed and replaced with Resolution No. 2010-92 was to include information relating to the continuance of the June 22, 2010 Hearing to the July 20, 2010 Hearing as well as correcting Condition Number 1 to reflect the City Council's approval instead of the Planning Commission's approval.

**Prior Hearings and Publications:**

A City Council hearing was scheduled for July 26, 2011. On July 14, 2011, 142 notices were mailed to adjacent property owners and homeowners associations in the City and the site was posted. On July 15, 2011, a legal advertisement was published in the newspaper.

**Environmental Findings:**

The construction of a single family residence in a residential zone is Categorically Exempted by the 2011 Guidelines for Implementation of the California Environmental Quality Act; Article 19, Section 15303 (a).

**Analysis:**

The applicants are requesting approval of a Modification to remove two conditions of approval of their Precise Plan of Development (PRE09-00007) which was originally approved on July 20, 2010. PRE09-00007 allowed first and second story additions to the existing one-story residence as well as a detached accessory structure near the south and east property lines. When approved, Conditions of Approval were incorporated relating to the height of vegetation and structures in the rear yard. Condition Number 14 states "That no additional permanent structures over 6-feet in height shall be constructed in the rear yard;" and Condition Number 15 states "That no vegetation located to the northeast of the rear building line of the main residence shall be allowed to extend above the existing property line walls along the southerly, easterly and northerly portion of the property." The applicants request that these two conditions be removed.

These conditions of approval arose during the hearing process for PRE09-00007. At the July 20, 2010 City Council hearing, neighboring property owners along Camino de Encanto expressed concerns over the proposed 2<sup>nd</sup> story addition as these properties have view corridors through the rear of 209 Via el Toro. In order to preserve these view corridors, additional conditions were adopted which dealt with the placement of the detached accessory structure, the sill height of windows in the house, roof pitch, placement of additional permanent structures over 6 feet in height in the rear and height of vegetation.

In the past, Planning Commission and City Council have added special conditions to Precise Plan projects to address concerns regarding views, light, air and privacy. These conditions have included such requirements as reducing interior plate heights, changing roof pitch, the use of frosted glass, raising windowsill heights, modifying grading, the inclusion of solid railings or screening walls on balconies, and other requirements to protect views, light, air and privacy. Additionally, conditions relating to existing or planned foliage have also been added when deemed appropriate to protect view, light, air and privacy. Because Condition Numbers. 14 and 15 are specifically designed to address view and light issues, staff recommends that this Modification be denied and these conditions remain in place.

The City of Torrance has received three items of correspondence from Betsy and Jim Delurgio regarding the removal of Condition Numbers 14 and 15, which are attached as

Attachments H, I, and J. There are a few items in these letters that staff wish to address.

Mrs. Delurgio states that “we do not understand why the final two conditions, #14 and #15, that are not related to our plan of development were included.” (Paragraph 3, Line 1-2 of the letter from Betsy Delurgio). However, trees and shrubs were shown on the site plan submitted by the Delurgios. The vegetation was part and parcel of the plan the applicants presented for City Council approval. Additionally, the proposed two-story structure has massing that affects views and privacy of the surrounding neighbors. Compared to the existing condition, the proposed plan will increase the building mass on the property. As the Council considers increases in building mass, it is appropriate to consider ways to reduce the additional massing effect that foliage may have if it reaches certain heights at specified locations.

Mrs. Delurgio states that “these conditions were arbitrarily created against our property during the closed session of the hearing.” (Paragraph 3, lines 2-3 of the letter from Betsy Delurgio, Attachment H). It should be noted that there was no closed session conducted during the consideration of the item. Condition Number 14 and Condition Number 15 were added by the City Council in public session after the hearing was closed.

The bulk of Mrs. Delurgio’s letter describes alleged conduct of her neighbors that has no bearing on the two conditions at issue.

Mr. Delurgio’s letter raises several legal arguments. (Attachment I.) The Delurgios previously filed a lawsuit against the City of Torrance challenging these same two conditions of approval on the factual grounds stated in the letter. The Delurgios filed a dismissal with prejudice on May 13, 2011. A dismissal with prejudice is equivalent to a judgment in favor of the City of Torrance on the merits of the claim. Therefore, Mr. Delurgio’s legal arguments are barred because those claims have been adjudicated in the City’s favor.

Even putting aside the impact of the prior litigation, the claims have no merit.

His first claim is that the imposition of the two conditions constitutes “spot zoning.” The imposition of the conditions does not affect the zoning of the property, which remains single family residential. Moreover, many other properties in the Hillside Overlay Zone have been subject to similar special conditions in order to protect views, light, air and privacy.

Mr. Delurgio’s second claim is that the conditions render construction on their lot impossible. This is obviously not the case. An existing one story structure already exists on the property, and a two story structure has been approved. That the applicants cannot have additional permanent structures or foliage of a desired height in a portion of their lot does not render construction “impossible.”

Mr. Delurgio next suggests that an ordinance was required to impose Condition Numbers 14 and 15. The conditions are not legislative in nature, but rather are

administrative, applying to the particular facts and circumstances of a specific application. The conditions are imposed pursuant to a legislative regulation that was itself adopted by ordinance, namely, the Hillside Overlay Zone regulations.

Next, Mr. Delurgio indicates that the conditions conflict with the General Plan. However, he has not identified any portion of the General Plan that gives rise to the alleged conflict.

Finally, Mr. Delurgio raises a variety of constitutional issues. The provisions he raises have no bearing on the request to eliminate the two subject conditions. There is no constitutionally protected right to build a two-story home in a hillside area without conditions designed to protect views, light, air and privacy. Nor has the property been taken for any public use. These claims, like the others, simply have no merit.

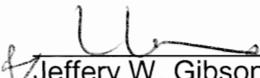
Staff has attached all of the material from the July 20, 2010, August 24, 2010 and September 21, 2010 City Council hearings as limited distribution as it consists of nearly 300 pages. A copy of the material is available to the public upon request.

Respectfully submitted,

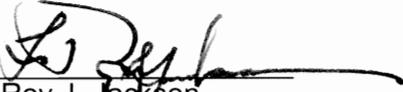
Jeffery W. Gibson  
Community Development Director

By   
Gregg D. Lodan, AICP  
Planning Manager

CONCUR:

  
Jeffery W. Gibson  
Community Development Director

NOTED:

  
LeRoy J. Jackson  
City Manager

Attachments:

- A. Resolution
- B. Location and Zoning Map
- C. Proofs of Publication and Notification
- D. Minutes from the 7/20/10, 8/24/10 and 9/21/10 City Council Hearings
- E. Plot Plan, Floor Plan and Elevations
- F. Previous City Council Staff Reports and Items Submitted at Hearings (Limited Distribution)
- G. Mayor's Script (Limited Distribution)
- H. Email and attached letter from Betsy Delurgio dated 7/21/2011 at 11:38 a.m.
- I. Email and attached letter from Jim Delurgio dated 7/21/2011 at 11:49 a.m.
- J. Email from Jim Delurgio dated 7/21/2011 at 3:07 p.m.

**RESOLUTION NO. 2011-**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, DENYING A MODIFICATION OF A PREVIOUSLY APPROVED PRECISE PLAN OF DEVELOPMENT (PRE09-00007) AS PROVIDED FOR IN DIVISION 9, CHAPTER 1, ARTICLE 41 OF THE TORRANCE MUNICIPAL CODE TO ALLOW THE DELETION OF CONDITION NUMBER 14 AND CONDITION NUMBER 15 OF CITY COUNCIL RESOLUTION NO. 2010-92 ON PROPERTY LOCATED WITHIN THE HILLSIDE OVERLAY DISTRICT IN THE R-1 ZONE AT 209 VIA EL TORO.

**MOD11-00006 (PRE09-00007): JIM & BETSY DELURGIO**

**WHEREAS**, the Planning Commission of the City of Torrance conducted a public hearing on November 4, 2009, to consider an application for a Precise Plan of Development filed by Jim & Betsy Delurgio to allow first and second story additions to an existing one-story single-family residence in conjunction with a new accessory structure on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro; and

**WHEREAS**, the Planning Commission of the City of Torrance continued the matter indefinitely for a redesign; and

**WHEREAS**, the Planning Commission of the City of Torrance conducted a public hearing on May 19, 2010, to consider an application for a Precise Plan of Development filed by Jim & Betsy Delurgio to allow first and second story additions to an existing one-story single-family residence in conjunction with a new accessory structure on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro; and

**WHEREAS**, on May 19, 2010, the Planning Commission of the City of Torrance denied without prejudice the Precise Plan request; and

**WHEREAS**, the City Council of the City of Torrance conducted a public hearing on June 22, 2010, to consider an appeal of a Planning Commission Denial without Prejudice for a Precise Plan of Development filed by Jim & Betsy Delurgio to allow first and second story additions to an existing one-story single-family residence in conjunction with the construction of a new accessory structure on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro; and

**WHEREAS**, the City Council of the City of Torrance continued the matter to July 20, 2010; and

**WHEREAS**, the City Council of the City of Torrance conducted a public hearing on July 20, 2010, to consider an appeal of a Planning Commission Denial without Prejudice for a Precise Plan of Development filed by Jim & Betsy Delurgio to allow first and second story additions to an existing one-story single-family residence in conjunction with the construction of a new accessory structure on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro; and

**WHEREAS**, the Delurgios filed a writ of mandate action challenging Conditions #14 and #15, and ultimately dismissed the lawsuit with prejudice in favor of the City; and

**WHEREAS**, the City Council of the City of Torrance conducted a public hearing on July 26, 2011, to consider a Modification of a previously approved Precise Plan of Development (PRE09-00007) filed by Jim & Betsy Delurgio to delete Condition #14 and Condition #15 of City Council Resolution No. 2010-92 on property located within the Hillside Overlay District of the R-1 Zone at 209 Via el Toro; and

**WHEREAS**, due and legal publication of notice was given to owners of property in the vicinity thereof and due and legal hearings have been held, all in accordance with the provisions of Division 9, Chapter 6, Article 2 of the Torrance Municipal Code; and

**WHEREAS**, the City Council of the City of Torrance does hereby find and determine as follows:

- a) That the property is located at 209 Via el Toro; and
- b) That the property is identified as Lot 126 in Tract 18379 as per map recorded in Parcel Map Book 7512, Page 007 and Parcel 029 in the Office of the County recorder County of Los Angeles, State of California; and
- c) That the deletion of Condition Numbers 14 and 15 will affect the rights of adjacent property owners or tenants or otherwise would constitute an adverse impact on them as additional permanent structures and vegetation could block views of neighboring properties along Camino de Encanto; and
- d) That the deletion of such conditions will make a material change in the concept or execution of the project as approved by the City Council as these conditions were placed to protect views of properties along Camino de Encanto; and
- e) That there is no hardship to the applicant if the deletion is not granted as Precise Plan of Development 09-00007 (PRE09-00007) approved 1<sup>st</sup> and 2<sup>nd</sup> story additions to an existing one story residence in addition to a detached accessory structure adjacent to the south and east property lines, and the deletion of the conditions is not warranted for the reasons stated in the staff report;

**NOW, THEREFORE, BE IT RESOLVED** that MOD11-00006 (PRE09-00007) filed by Jim and Betsy Delurgio to delete Condition Number 14 and Condition Number 15 of City Council Resolution No. 2010-92 on property located within the Hillside Overlay District of the R-1 Zone at 209 Via el Toro is hereby DENIED.

INTRODUCED, APPROVED and ADOPTED this 26<sup>th</sup> day of July, 2011.

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MAYOR, of the City of Torrance

ATTEST:

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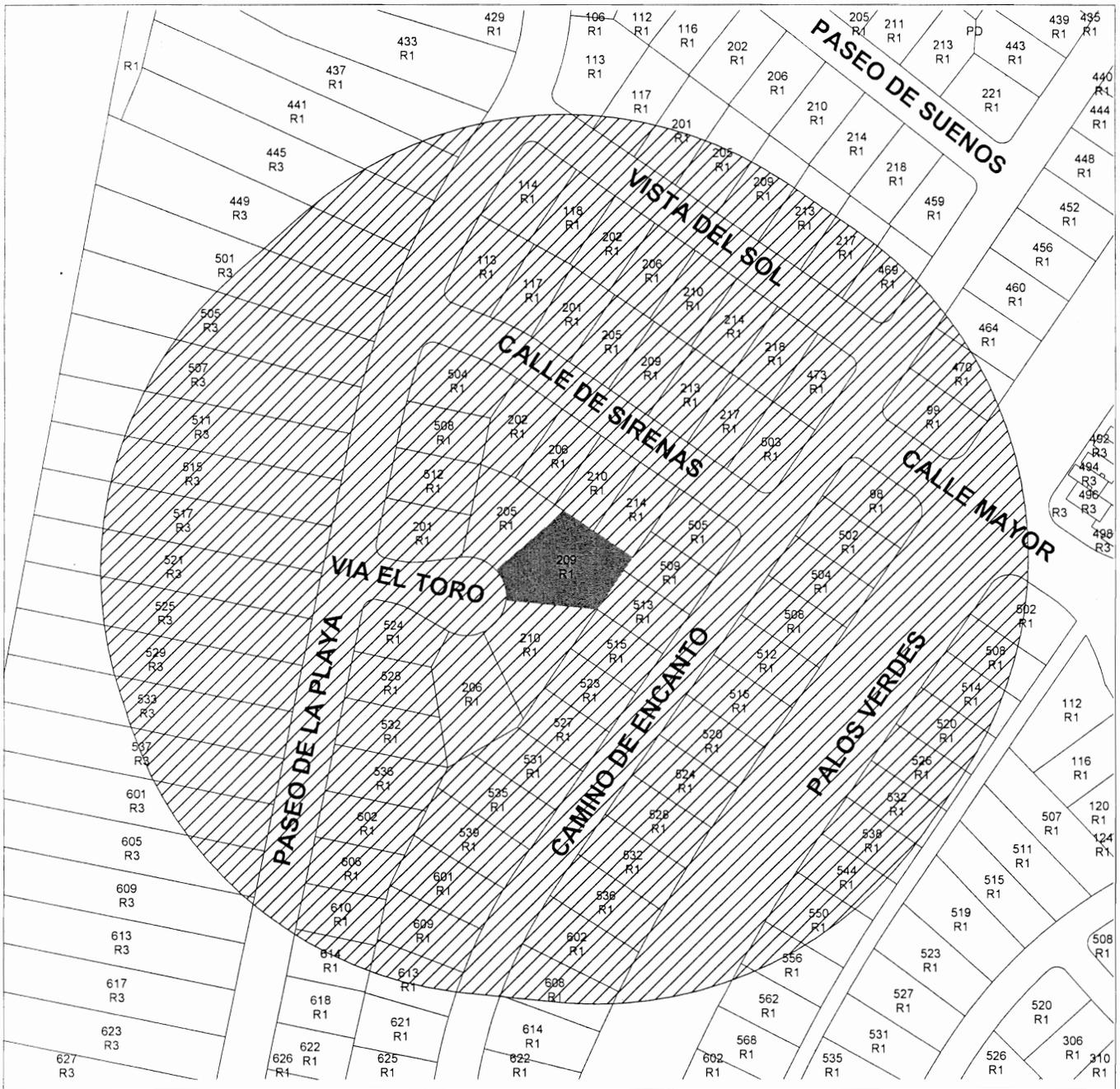
City Clerk of the City of Torrance

APPROVED AS TO FORM:

JOHN L. FELLOWS III, City Attorney

By \_\_\_\_\_  
Patrick Q. Sullivan, Assistant City Attorney





**LOCATION AND ZONING MAP**

209 Via el Toro  
MOD11-00006 (PRE09-00007)

**LEGEND**

- 209 Via el Toro
- 500ft Notification Area

0 75 150 300 Feet

# Daily Breeze

21250 HAWTHORNE BLVE, STE 170 \* TORRANCE CALIFORNIA 90503-4077  
Direct: (310) 543-6635 Fax: (310) 316-6827

**PROOF OF PUBLICATION**  
(201 5.5 C.C.P.)

STATE OF CALIFORNIA

County of Los Angeles,

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of the THE DAILY BREEZE

a newspaper of general circulation, printed and published \_\_\_\_\_

in the City of Torrance\*  
County of Los Angeles, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of County of Los Angeles, State of California, under the date of \_\_\_\_\_

June 10, 1974

Case Number SWC7146

that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement there of on the following dates, to-wit

July 15,

all in the year 2011

the foregoing is true and correct.

Dated at Torrance

California, this 15 July 2011



\*The Daily Breeze circulation includes the following cities:  
Carson, Compton, Culver City, El Segundo, Gardena, Harbor City, Hawthorne, Hermosa Beach, Inglewood, Lawndale, Lomita, Long Beach, Manhattan Beach, Palos Verdes Peninsula, Palos Verdes, Rancho Palos Verdes, Rancho Palos Verdes Estates, Redondo Beach, San Pedro, Santa Monica, Torrance and Wilmington

This space is for the County Clerk's Filing Stamp

2011 JUL 18 AM 10:20

Proof of Publication of

DB 7-59

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that a Public Hearing will be held before the Torrance City Council at 7:00 p.m., July 26, 2011 in the City Council Chambers of City Hall, 3031 Torrance Boulevard, Torrance, California, on the following matter:

**MOD11-00006 (PRE09-00007), JIM AND BETSY DELURGIO:** City Council considers Modification of previously approved Precise Plan of Development (PRE09-00007) City Council Resolution No. 2010-92 relating to Condition #14 and #15 on property located in the Hillside Overlay District in the R-1 Zone at 209 Via el Toro.

Material can be reviewed in the Community Development Department. All persons interested in the above matter are requested to be present at the hearing or to submit their comments to the City Clerk, City Hall, 3031 Torrance Boulevard, Torrance, CA 90503, prior to the public hearing.

If you challenge the above matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development Department or the office of the City Clerk prior to the public hearing, and further, by the terms of Resolution No. 88-19, you may be limited to ninety (90) days in which to commence such legal action pursuant to Section 1094.6 of the Code of Civil Procedure.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development Department at (310) 618-5990. If you need a special hearing device to participate in this meeting, please contact the City Clerk's Office at (310) 618-2870. Notification 48 hours prior to the meeting will ensure the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA Title II].

For further information, contact the **DEVELOPMENT REVIEW DIVISION** of the Community Development Department at (310) 618-5990.

**SUE HERBERS  
CITY CLERK**

Published: July 15, 2011

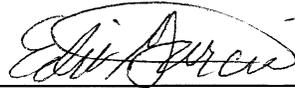
**PROOF OF SERVICE BY MAIL**

I, the undersigned, am a resident of the County of Los Angeles, State of California, over the age of eighteen years, and not a party to the within action. I am employed by the City of Torrance, 3031 Torrance Boulevard, Torrance California 90503.

On July 14, 2011, I caused to be mailed 142 copies of the within notification for MOD11-00006 (PRE09-00007): JIM AND BETSY DELURGIO to the interested parties in said action by causing true copies thereof to be placed in the United States mail at Torrance California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 14, 2011, at Torrance, California.



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(signature)

**EXCERPT OF MINUTES** Minutes Approved

July 20, 2010

**MINUTES OF AN ADJOURNED REGULAR  
MEETING OF THE TORRANCE CITY COUNCIL****1. CALL TO ORDER**

The Torrance City Council convened in a joint meeting with the Commission on Aging at 5:30 p.m. on Tuesday, July 20, 2010 in the West Annex meeting room at City Hall.

**ROLL CALL**

Present: Councilmembers Barnett, Brewer, Furey, Numark, Rhilinger, Sutherland, and Mayor Scotto.

Absent: None.

Also Present: City Manager Jackson, Assistant City Attorney Sullivan, City Clerk Herbers, and other staff representatives.

The Commission on Aging meeting was adjourned at 6:24 p.m., and the City Council recessed to Council Chambers to conduct regular business.

The City Council reconvened in Council Chambers at 7:02 p.m. with all members present.

**13. HEARINGS****13A. PRE09-00007: 209 VIA EL TORO – JIM AND BETSY DELURGIO****Recommendation**

Recommendation of the Planning Commission that City Council deny the appeal and take the following action on property located within the Hillside Overlay District, in the R-1 Zone at 209 Via El Toro:

- 1) Adopt a Resolution denying a Precise Plan of Development to allow construction of first and second story additions to an existing one-story single family residence in conjunction with a new accessory structure.

Recommendation of the Community Development Director that City Council uphold the appeal and take the following action on property located within the Hillside Overlay District, in the R-1 Zone at 209 Via El Toro:

- 1) Adopt a Resolution approving a Precise Plan of Development to allow construction of first and second story additions to an existing one-story single family residence in conjunction with a new accessory structure.

Mayor Scotto announced that this was the time and place for a public hearing on this matter. City Clerk Herbers confirmed that the hearing was properly advertised.

With the aid of slides, Planning Manager Lodan briefly reviewed the proposed project and shared photographs of the silhouette taken from various vantage points in the neighborhood. He noted that the Planning Commission voted to deny the project on May 19, 2010 by a vote of 6-0 with one commissioner abstaining.

Councilmember Sutherland disclosed that he visited the site and spoke with the property owner and some of the neighbors. He noted that he had had meetings with Vicki Radel, one of the neighbors, when he served as president of the Rotary Club in 2000-2001 and she served as district governor, but since that time they have only exchanged greetings at social events.

Councilmember Brewer disclosed that he visited the subject property and neighbors on Camino de Encanto.

Councilmember Rhilinger disclosed that she drove through the area and viewed the silhouette from 513 and 515 Camino de Encanto, but made it clear to those with whom she came into contact that she could not discuss the case.

Councilmember Barnett disclosed that he visited the subject property and 513, 515 and 523 Camino de Encanto.

Councilmember Furey reported that he visited the site and viewed the silhouette from a number of vantage points, but did not speak to the proponents or any of the neighbors.

Councilmember Numark disclosed that he visited 513, 515 and 523 Camino de Encanto to assess the project's view impact.

Mayor Scotto disclosed that he discussed the project with the applicants and visited 513, 515 and 523 Camino de Encanto. He noted that he also knows Dr. Vicki Radel as a fellow Rotarian but it would not affect his ability to make an impartial decision.

Using slides to illustrate, Nagy Bakhoum, Obelisk Architects, project architect, explained that the usable area of the subject lot is fairly small due to views over and through the property and a one-story addition of the same size would have a much greater impact on ocean and city-light views than the proposed two-story project. He reviewed the revisions that were made to the original project to address neighbors' concerns, including eliminating/reconfiguring square footage, and reported that the applicant has offered to remove several large trees to open up view corridors. He noted that concerns have been expressed about privacy impact, but the second story is approximately 77 feet away from the nearest structure and second-story windows that could potentially impact privacy have a five-foot minimum sill height. He indicated that the applicant was amenable to a neighbor's suggestion that the detached accessory structure/pool house be moved closer to the property line to mitigate the view impact, however a Waiver of setback requirements would be needed.

Councilmember Brewer asked about suggestions from neighbors that the project incorporate subterranean elements. Mr. Bakhoum explained that the subject lot is not conducive to a subterranean design because it is primarily flat except for the upslope at the rear of the property and drainage would be compromised if portions of the structure were below grade.

In response to Councilmember Brewer's inquiry, Mr. Bakhoum reported that the accessory structure/pool house was not connected to the house because doing so would block the view at 523 Camino de Encanto. He explained that he did not use a flat roof on the pool house because it would not fit with the architectural style of the rest of

the project and noted that the roof pitch is minimal and the interior has only an 8-foot plate height to keep the accessory structure as low as possible.

Councilmember Barnett asked if the trees currently intertwined with the silhouette will be removed. Mr. Bakhom responded that he believed it would be impossible to build the project without removing them, noting that the trees were planted to shade the existing home which has poor insulation.

Councilmember Barnett reported that he observed that the accessory structure/pool house would impair views and stressed the importance of maintaining north and northwest view corridors. He suggested the possibility of limiting trees/shrubs and the roofline of the accessory structure to the height of the adjacent property line wall to the east.

Jim Delurgio, 209 Via El Toro, applicant, discussed his efforts to address neighbors' concerns during the design process; urged the Council to disregard photographs submitted by opponents that distort the project's impact; and related his belief that the proposed two-story project is the best design given the constraints of the lot.

Roberta Blowers, 721 Camino de Encanto, contended that the proposed project was not in harmony with the neighborhood, submitting a map of the notification area indicating that the majority of homes are one-story, with only a few two-story homes most of which are pre-Hillside Ordinance or semi-subterranean. She suggested that limiting the height of vegetation and requiring a flat roof on the accessory structure/pool house should be considered if the project is approved.

Gene Kusion, 523 Camino de Encanto, voiced his opinion that long-time residents like his family and other neighbors, who purchased their homes with unobstructed views 20-45 years ago should be protected from view blockage by newcomers like the Delurgios, who knowingly purchased a fixer-upper in a problematic location only a few years ago. Using photographs to illustrate, he reported that the project would block ocean and city-light views from his property, including the Hermosa and Manhattan Beach piers and the Santa Monica Mountains. He noted that a smaller two-story project next door to the subject property at 210 Via El Toro was previously denied due to the impact on views.

Councilmember Brewer related his observation that a one-story addition would seem to impact Mr. Kusion's view more than the proposed project. Mr. Kusion stated that he could not determine to what extent his view would be impacted without seeing actual plans and the applicant and his architect have declined to provide one-story plans so neighbors could make an objective comparison.

Armando Montano, 526 Palos Verdes Boulevard, voiced objections to the project, contending that it would impact his ocean view and devalue his property.

Andrew Filak, 514 Palos Verdes Boulevard, related his belief that the proposed project violates the California Coastal Act and the Hillside Ordinance, which limits construction to 14 feet in height, and urged the Council to deny it.

Assistant City Attorney Sullivan clarified that structures over 14 feet in height are permitted in the Hillside Overlay, but require the approval of a Precise Plan of Development.

Cindy Constantino, 513 Camino de Encanto, stated that the proposed project would diminish her privacy by 100% and would permanently block blue and white-water views that are currently obscured by poplar trees on the subject property. She maintained that the architect has refused to consider alternatives that could mitigate view impact, such as lowering the grade, building subterranean, utilizing a flat roof, and moving the accessory structure to the northeast section of the lot. She noted that the Planning Commission carefully considered the project and voted unanimously to reject it.

In response to Councilmember Brewer's inquiry, Ms. Constantino confirmed that she would prefer a one-story addition on this property.

Vicki Radel, 515 Camino de Encanto, reported that she has lived in her home for over 35 years and has always maintained a good relationship with her neighbors, therefore she greatly resents Mr. Delurgio's threats and frivolous lawsuits. She stated, however, in the spirit of compromise she would like to request that the following conditions be imposed if the Council decides to approve the project: 1) That the accessory structure/pool house be relocated to the northeast corner of the lot or moved closer to the property line; 2) That both the accessory structure/pool house and the second-story of the house have flat roofs; and 3) That vegetation be limited to the height of property-line walls.

A brief discussion ensued concerning the possibility of regulating the height of the vegetation.

Assistant City Attorney Sullivan advised that the City Attorney's office has grave concerns about imposing a condition restricting the height of vegetation due to the difficulty of enforcing such a condition and stressed the need to narrowly define the parameters if the Council chooses to do so because fence heights can change.

Peter Lattey, 515 Camino de Encanto, stated that the applicant has repeatedly claimed that a one-story project would have a greater impact on views, but has never provided actual plans to prove that would be the case. He noted his opposition to the project and proposed the following conditions if it is approved: 1) That vegetation be limited to a specific height, except for areas where it does not impact views; 2) That east and south facing windows be obscured or have a minimum sill height of 5'6"; 3) That no other structures, such as a gazebo or play structure, be allowed in any location that would obstruct a neighbor's view; 4) That the second-story of the house and the accessory structure/pool house have flat roofs and utilize only flat solar panels; and 5) That the accessory structure be moved to within two feet of the property line or relocated to the northeast corner.

Judy Brunetti, 4815 Greenmeadows Avenue, requested clarification of the approval process should the applicant propose a one-story home under 14 feet in height.

Ruth Vogel, 114 Via la Soledad, offered clarification of her comments at the May 19, 2010 Planning Commission meeting. She explained that she mentioned that

the Council had denied a project in July 2008 to protect a neighbor's blue sky view, however, she did not state that the Council had set a precedent by doing so.

Mr. Bakhoum requested an opportunity to review the information submitted at this hearing.

The Council briefly recessed from 10:03 p.m. to 10:16 p.m.

Responding to audience members' comments, Mr. Bakhoum disputed the claim that there are only a few two-story homes within the notification area, reporting that 38% of the homes are two-story according to his research. Submitting photographs to illustrate, he stated that Mr. Kusion is well aware that a one-story addition would block his view as evidenced by the fact that he has requested that trees in that view corridor be trimmed to no taller than six feet. With regard to 513, 515 and 523 Camino de Encanto, he noted that it was staff's impartial judgment that the proposed project has been designed to minimize the impact on these properties. He submitted information regarding illegal tree trimming that took place on the subject property.

Betsy Delurgio, 209 Via El Toro, applicant, stated that she and her husband have done everything possible to communicate with neighbors; noted that this is the project's third revision and staff has objectively confirmed that this design would have the least impact on neighbors; and pointed out that the FAR (floor area ratio) is well below the maximum allowed. She contended that the project maintains all significant views and urged the Council to approve it, either as proposed or imposing reasonable conditions, so that the project can finally go forward.

Councilmember Numark noted that Torrance Municipal Code §91.41.10 requires that the applicant demonstrate that denial of the application would constitute an unreasonable hardship in order to exceed the height of the existing home.

Mr. Bakhoum stated that he believed it would be unfair not to allow the Delurgios to develop their property in a way that is consistent with other homes in this neighborhood, noting that the majority of homes have an FAR of around 0.35, which is slightly above the project's FAR of 0.34. Additionally, he noted that the Delurgios need more space to accommodate their growing family.

Mr. Delurgio noted that the detached accessory structure was a compromise in order to preserve view corridors for neighbors as he would have preferred to have this space as part of the house.

Councilmember Numark asked for staff's assessment of the project's impact on views to the south from residences on Camino de Encanto and Planning Manager Lodan reported that the blockage in this direction is primarily blue sky views.

In response to Councilmember Sutherland's inquiry, Mr. Delurgio confirmed that his real estate agent explained the Hillside Ordinance prior to purchase and he understood that there are difficulties associated with developing property in this area. He stated, however, that he also understood that his property rights would be upheld and the City would not execute a regulatory taking of his property.

Councilmember Sutherland related his understanding that the City may not restrict solar panels due to view impact, and Assistant City Attorney Sullivan confirmed

that the Solar Rights Act protects solar panel installations and supersedes the Hillside Ordinance.

Mayor Scotto asked about the possibility of moving the accessory structure/pool house to the northeast corner of the property.

Mr. Bakhoun explained that moving the accessory structure to this area of the lot would drastically impact the adjacent property, which is approximately 4 feet lower than the subject property.

Mr. Delurgio reported that this property owner now supports the project, but would be opposed if the accessory structure is relocated because it would block sunlight from her property.

At Councilmember Numark's request, Mr. Lattey provided clarification regarding the conditions he earlier proposed. With regard to vegetation, he proposed limiting the height of vegetation within ten feet of property boundaries to the height of the adjacent wall, which is approximately 4 feet, and limiting vegetation adjacent to the house or in areas that do not obstruct views to no more than 10 feet.

In response to Councilmember Brewer's inquiry, Mr. Bakhoun provided clarification regarding sill heights. He reported that changing to a flat roof would result in an 18-24 inch height reduction, but he was not in favor of this for aesthetic reasons, and that modifying the roof pitch from 4-in-12 to 3-in-12 would result in a height reduction of approximately 10.75 inches. He expressed his clients' willingness to work with neighbors on vegetation issues.

**MOTION:** Councilmember Rhilinger moved to close the public hearing. The motion was seconded by Councilmember Sutherland and passed by unanimous vote.

Councilmember Sutherland indicated that he was generally opposed to allowing second stories in the Hillside Overlay area and didn't see how the Council could approve this project after denying a two-story project next door, however, he feared that a one-story addition would have a greater impact on views and neighbors could come to regret their opposition to this project. He expressed the hope that real estate agents would do a better job of emphasizing the near impossibility of obtaining approval for a second story in the Hillside Overlay area.

Councilmember Brewer expressed concerns that severely limiting property owners' ability to improve their homes could ultimately impact property values throughout the Hillside area.

Councilmember Barnett noted that if the Council denies this project, it would be tantamount to saying that the applicant may only build a one-story addition and he was concerned that a one-story addition might also be denied and the applicant would be left with no project.

Assistant City Attorney Sullivan conceded that there could be property rights issues if both a two-story project and a one-story project were denied. He clarified that whereas the Hillside Ordinance §91.41.6(a) states that a proposed development shall not have an adverse impact on the view, light, air and privacy of other properties in the vicinity, "adverse impact" has been consistently interpreted by this Council, previous Councils and the Court to mean "substantial adverse impact."

Councilmember Barnett stated that while neighbors have clearly indicated they do not want a two-story project, he was concerned that the "cure was worse than the disease," since they might find a one-story project even more objectionable.

Assistant City Attorney Sullivan noted that §91.41.6 (b) states that a proposed development must be located, planned and designed so as to cause the least intrusion on views, and this is something Councilmembers should also consider because they may find based on the testimony and evidence presented along with their own observations that the proposed two-story design would cause the least intrusion.

Councilmember Rhilinger stated that she also generally does not favor allowing second stories in the Hillside Overlay, but it was evident from Mr. Bakhoum's presentation that this lot is unusual due to the various view corridors through the property and that is why Hillside cases are considered on an individual basis. She related her belief that a one-story project would be more intrusive and that the proposed two-story design does the best job of preserving the views of all the neighbors involved, including those not present at this hearing. She expressed support for moving the accessory structure closer to the property line since both sides agree this would be an improvement and changing the roof pitch to 3-in-12, but indicated that she did not favor changing to a flat roof because it would detract from the home's appearance.

Councilmember Furey commended Mr. Bakhoum for his presentation showing the various view corridors, noting that it was very helpful and demonstrated that an effort was made to preserve neighbors' views. He commented on the acrimony the proposed project has created in the neighborhood and stated that he would have preferred that the applicants had removed the trees that obscured the silhouette, some of which appeared to have been deliberately planted for this purpose. He echoed Councilmember Rhilinger's comments about moving the accessory structure and changing the roof pitch.

Councilmember Brewer stated that by denying this project, the Council would essentially be saying that it must be redesigned as a one-story home and according to the diagram of sight lines submitted by Mr. Bakhoum, this would drastically impact the view at 515 Camino de Encanto and could also block views of neighbors who are currently not affected by the project. He related his belief that the proposed two-story project has been designed to minimize view impact and indicated that he was inclined to support it with the additional conditions proposed by Councilmember Rhilinger.

Councilmember Numark noted that there is no inherent right to build in the Hillside Overlay area as all construction must comply with the Code. With respect to this case, he explained that it was a difficult decision because there is some impact, however, he has concluded that the project complies with the Hillside Ordinance because he believes it would not have a substantial impact on views, light, air or privacy; it was located, planned and designed to cause the least intrusion on other properties in the vicinity; it was not feasible to increase the size of or rearrange the space within the existing building or structure except by increasing the height; and denial of the project would be an unreasonable hardship because the applicants would be denied the opportunity to develop their property in compliance with the Code. He indicated that he favored including the additional conditions discussed to ensure that the project would have the least possible impact.

Mayor Scotto commented that he enjoys a view from his home and is very conscious of the need to protect them. He stated that he saw no way to build a one-story addition on this property without affecting several neighbors' views, with the home at 523 Camino de Encanto being the most affected, and he believes the proposed two-story project is the best solution. He proposed a condition limiting vegetation to the height of existing property line walls to ensure that views are protected in the future and indicated that he also favored changing the roof pitch and moving the accessory structure closer to the property line.

Councilmember Rhilinger expressed concerns about imposing a condition restricting vegetation that applies to this applicant only and the possibility that it could bind the Council in future decisions. She related her preference that any restrictions on vegetation be a private agreement between the parties involved.

Mayor Scotto asked about the Council's ability to specify that the condition concerning vegetation applies to this project and this project only.

Assistant City Attorney Sullivan advised that while the Council can specify that the condition applies to this project only, the public tends to view such action as precedent setting. He noted that even though the protection of blue-sky views was mentioned at only one City Council hearing a few years ago, this issue is now brought up on a regular basis at Planning Commission hearings. He reiterated staff's position that imposing this type of condition would be setting a dangerous precedent. He noted that the City does not have a tree ordinance and the Hillside Ordinance does not address vegetation.

Voicing support for imposing a condition restricting vegetation, Councilmember Numark noted that the Council has the authority to impose conditions as part of the Precise Plan approval process and related his belief that tree and shrubbery issues were an integral part of this case. He recognized that people may bring this up in the future, however each Hillside case is fact specific.

Councilmember Brewer expressed concerns about creating a de facto tree ordinance that applies to this property only, noting that there would be nothing to prevent downhill neighbors from planting "spite trees" to block the Delurgios' view. He voiced his opinion that it would be better for the parties involved to reach a private agreement as a step toward healing the rift in this neighborhood.

Mayor Scotto pointed out that should the Delurgios sell the property, any private agreement would go away, therefore, he favored imposing a condition that runs with the land thereby protecting views no matter who owns the property.

Councilmember Rhilinger acknowledged that it would be very helpful to the neighbors to permanently restrict vegetation on this property, but saw no reason why it should be done in this case when it has never been done in the past. She expressed concerns that such a condition could lead to a tree ordinance, which is something that she does not support.

Councilmember Furey stated that he would not support the project without some restriction on vegetation to protect neighbors' views.

Councilmember Brewer reiterated his opposition to creating a de facto tree ordinance that applies to this property only and related his belief that it would only lead to more animosity in this neighborhood and encourage others to seek the same protection.

**MOTION:** Councilmember Rhilinger moved to uphold the appeal and approve PRE09-00007, adding the following conditions:

- 1) That the accessory structure/pool house shall be moved as close to the southeast property line as possible.
- 2) That east and south-facing windows shall have a minimum sill height of 5'6" or be constructed of obscured glass.
- 3) That the second-story roof pitch shall be changed to 3-in-12.

The motion was seconded by Councilmember Brewer and Councilmember Numark offered a substitute motion.

**MOTION:** Councilmember Numark moved to uphold the appeal and approve PRE09-00007, adding the following conditions:

- 1) That the accessory structure/pool house shall be moved as close to the southeast property line as possible.
- 2) That east and south-facing windows shall have a minimum sill height of 5'6" or be constructed of obscured glass.
- 3) That the second-story roof pitch shall be changed to 3-in-12.
- 4) That no additional permanent structures over six feet high shall be added to the property.
- 5) That no vegetation on the south, east or north sides of the property shall exceed the height of the existing walls.

The motion was seconded by Councilmember Furey, and discussion continued.

Councilmember Brewer noted that there is currently play equipment in the backyard and questioned whether that would be deemed a permanent structure and therefore have to be removed.

Community Development Director Gibson advised that staff does not view play equipment as a permanent structure and would interpret "permanent structure" to mean something that requires a building permit. He noted that conditions of this nature tend to be contentious because people can disagree as to exactly what they mean.

Councilmember Numark commented that this process has been contentious for everyone involved and he believed the proposed restrictions were reasonable.

In response to Assistant City Attorney Sullivan's inquiry, Councilmember Numark clarified that it was not his intention to require that play equipment be removed.

Mayor Scotto called for a vote on the substitute motion.

**MOTION:** Councilmember Numark moved to uphold the appeal and approve PRE09-00007, adding the following conditions:

- 1) That the accessory structure/pool house shall be moved as close to the southeast property line as possible.
- 2) That east and south-facing windows shall have a minimum sill height of 5'6" or be constructed of obscured glass.
- 3) That the second-story roof pitch shall be changed to 3-in-12.
- 4) That no additional permanent structures over six feet high shall be added to the property.
- 5) That no vegetation on the south, east or north sides of the property shall exceed the height of the existing walls.

The motion was seconded by Councilmember Furey and passed by as reflected in the following vote:

AYES: Councilmembers Barnett, Furey, Numark and Mayor Scotto  
NOES: Councilmembers Brewer, Rhilinger and Sutherland

Community Development Director Gibson noted that Resolutions reflecting the Council's decision would be brought back for approval at later date.

####

**EXCERPT OF MINUTES** Minutes Approved

August 24, 2010

**MINUTES OF AN ADJOURNED REGULAR  
MEETING OF THE TORRANCE CITY COUNCIL****1. CALL TO ORDER**

The Torrance City Council convened in an adjourned regular session at 5:35 p.m. on Tuesday, August 24, 2010 in City Council Chambers at Torrance City Hall.

**ROLL CALL**

Present: Councilmembers Barnett, Brewer, Furey, Numark, Rhilinger, Sutherland, and Mayor Scotto.

Absent: None.

Also Present: City Manager Jackson, City Attorney Fellows, City Clerk Herbers, and other staff representatives.

\*

**10D. RESOLUTION APPROVING PRECISE PLAN OF DEVELOPMENT AT  
209 VIA EL TORO****Recommendation**

Recommendation of the Community Development Director that City Council adopt a Resolution reflecting City Council decision at the July 20, 2010 meeting to approve an appeal of a Planning Commission decision and approve a Precise Plan of Development to allow the construction of first and second story additions to an existing one-story single family residence in conjunction with a new accessory structure on property located within the Hillside Overlay District, in the R-1 Zone at 209 Via El Toro.

**PRE09-00007: Jim & Betsy Delurgio**

Community Development Director Gibson reported that the Resolution reflects the Council's decision to approve an appeal and approve the project at 209 Via El Toro. He noted supplemental material amending Condition No. 13 to more accurately reflect the Council's intent as discussed at the July 20, 2010 meeting.

Gene Kusion, Camino de Encanto, requested confirmation that Condition No. 15 means that no vegetation on this lot shall be taller than the height of the existing perimeter walls except for along the front of the house, and Mayor Scotto confirmed that was the intent of the condition.

**MOTION:** Councilmember Barnett moved to concur with the staff recommendation. The motion was seconded by Councilmember Furey and passed as reflected in the following roll call vote:

AYES: Councilmembers Barnett, Furey, Numark and Mayor Scotto  
NOES: Councilmembers Brewer, Rhilinger and Sutherland

**RESOLUTION NO. 2010-82**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE APPROVING A PRECISE PLAN OF DEVELOPMENT AS PROVIDED FOR IN DIVISION 9, CHAPTER 1, ARTICLE 41 OF THE TORRANCE MUNICIPAL CODE TO ALLOW FIRST AND SECOND STORY ADDITIONS TO AN EXISTING SINGLE FAMILY RESIDENCE IN CONJUNCTION WITH THE CONSTRUCTION OF AN ACCESSORY STRUCTURE IN THE REAR ON PROPERTY LOCATED WITHIN THE HILLSIDE OVERLAY DISTRICT IN THE R-1 ZONE AT 209 VIA EL TORO

**PRE09-00007: JIM AND BETSY DELURGIO**

**MOTION:** Councilmember Furey moved to adopt Resolution No. 2010-82 as amended. The motion was seconded by Councilmember Barnett and passed as reflected in the following roll call vote:

AYES: Councilmembers Barnett, Furey, Numark and Mayor Scott  
NOES: Councilmembers Brewer, Rhilinger and Sutherland

###

**EXCERPT OF MINUTES** Minutes Approved

September 21, 2010

**MINUTES OF AN ADJOURNED REGULAR  
MEETING OF THE TORRANCE CITY COUNCIL****1. CALL TO ORDER**

The Torrance City Council convened in a joint meeting with the Library Commission at 5:35 p.m. on Tuesday, September 21, 2010 in the Katy Geissert Civic Center Library meeting room.

**ROLL CALL**

Present: Councilmembers Barnett, Brewer, Furey, Numark, Rhilinger, Sutherland, and Mayor Scotto.

Absent: None.

Also Present: City Manager Jackson, Assistant City Attorney Sullivan, City Clerk Herbers, and other staff representatives.

The Library Commission meeting was adjourned at 6:49 p.m., and the City Council recessed to Council Chambers to conduct regular business.

The City Council reconvened in Council Chambers at 7:05 p.m. with all members present.

**10. PLANNING AND ECONOMIC DEVELOPMENT****10A. RESOLUTION APPROVING PRE09-00007 AT 209 VIA EL TORO****Recommendation**

Recommendation of the Community Development Director that City Council repeal Resolution 2010-82 and adopt a new Resolution reflecting approval of a Precise Plan of Development to allow the construction of first and second story additions to an existing one-story single family residence in conjunction with a new accessory structure on property located within the Hillside Overlay District, in the R-1 Zone at 209 Via El Toro. PRE09-00007: Jim & Betsy Delurgio

Planning Manager Lodan reported that the proposed Resolution corrects errors that were discovered in Resolution No. 2010-82 adopted on August 24, 2010.

**MOTION:** Councilmember Brewer moved to concur with the staff recommendation. The motion was seconded by Councilmember Barnett and passed by a 5-2 roll call vote, with Councilmembers Rhilinger and Sutherland dissenting.

**RESOLUTION NO. 2010-92**

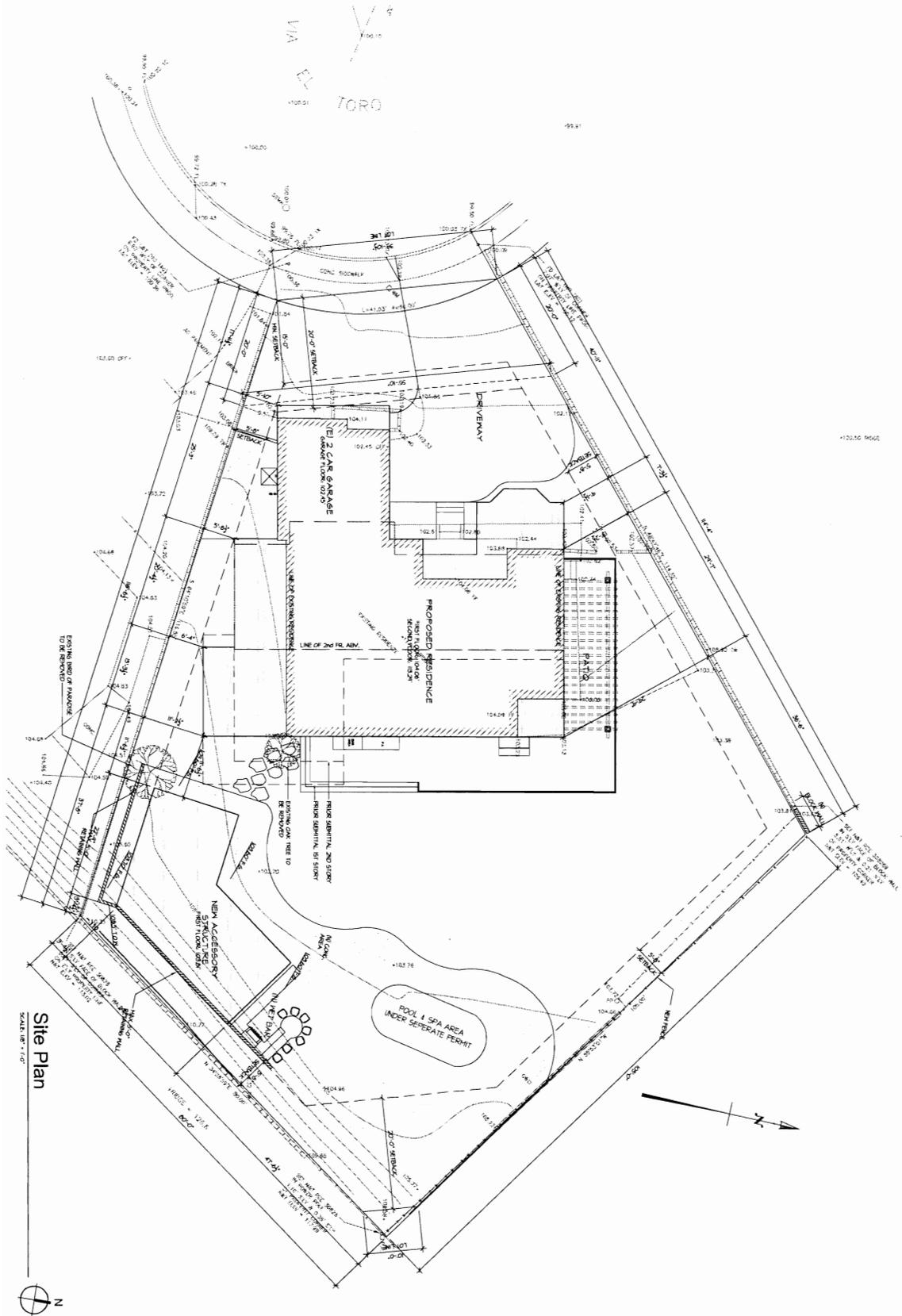
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, REPEALING RESOLUTION NO. 2010-82 AND APPROVING A PRECISE PLAN OF DEVELOPMENT AS PROVIDED FOR IN DIVISION 9, CHAPTER 1, ARTICLE 41 OF THE TORRANCE MUNICIPAL CODE TO ALLOW FIRST AND SECOND STORY ADDITIONS TO AN EXISTING SINGLE FAMILY RESIDENCE IN CONJUNCTION WITH THE CONSTRUCTION OF AN ACCESSORY STRUCTURE IN THE REAR ON PROPERTY LOCATED WITHIN THE HILLSIDE OVERLAY DISTRICT IN THE R-1 ZONE AT 209 VIA EL TORO  
**PRE09-00007: JIM AND BETSY DELURGIO**

**MOTION:** Councilmember Furey moved to adopt Resolution No. 2010-92. The motion was seconded by Councilmember Barnett and passed by a 5-2 roll call vote, with Councilmembers Rhilinger and Sutherland dissenting.

###







Site Plan  
SCALE: 1" = 10'



**A-001**

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Site Plan

DATE: MAY 4, 2010

PROJECT NUMBER: 1003 DEL TOR TOR

DATE: MAY 4, 2010

PROJECT: Deluglio Residence

CLIENT: Deluglio

DATE: MAY 4, 2010

PROJECT: Deluglio Residence

CLIENT: Deluglio

DATE: MAY 4, 2010

PROJECT: Deluglio Residence

CLIENT: Deluglio

DATE: MAY 4, 2010

PROJECT: Deluglio Residence

CLIENT: Deluglio

DATE: MAY 4, 2010

PROJECT: Deluglio Residence

CLIENT: Deluglio

DATE: MAY 4, 2010

PROJECT: Deluglio Residence

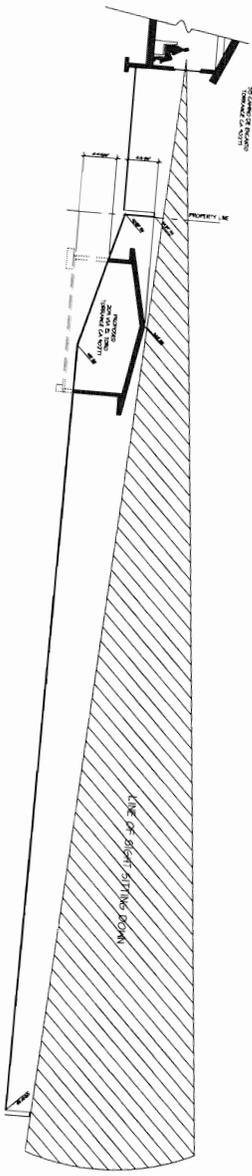
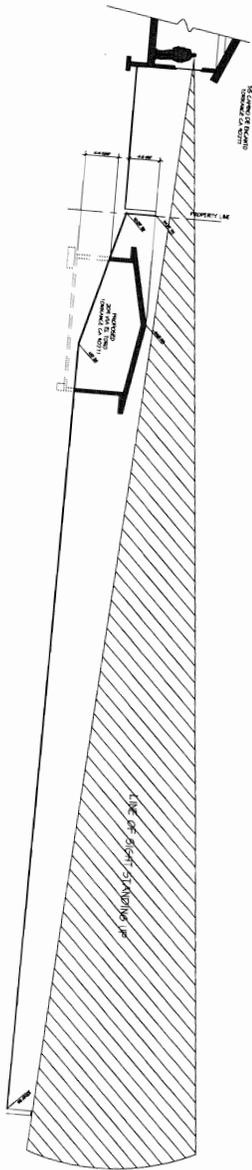
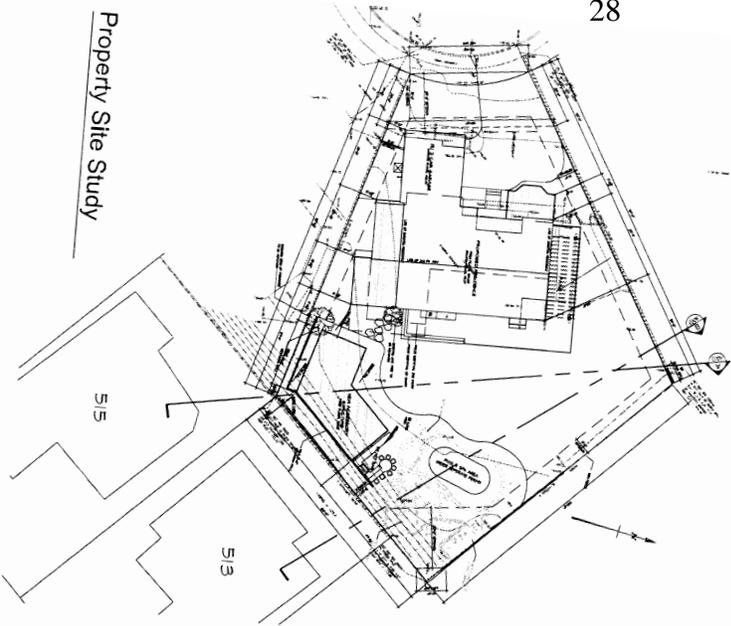
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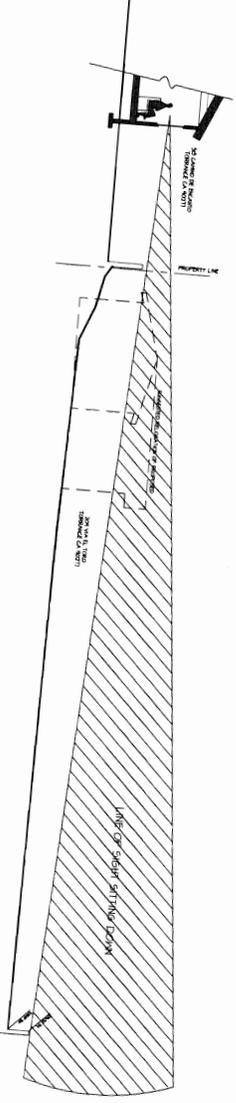
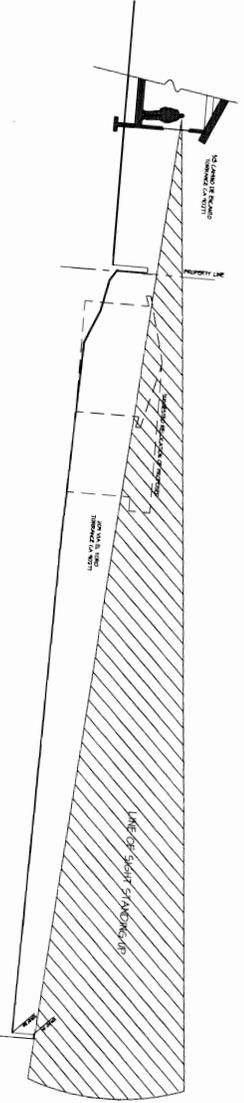
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209 Via El Toro  
Redondo Beach  
California 90277

Property Site Study



Property Site Section Study A



Property Site Section Study B



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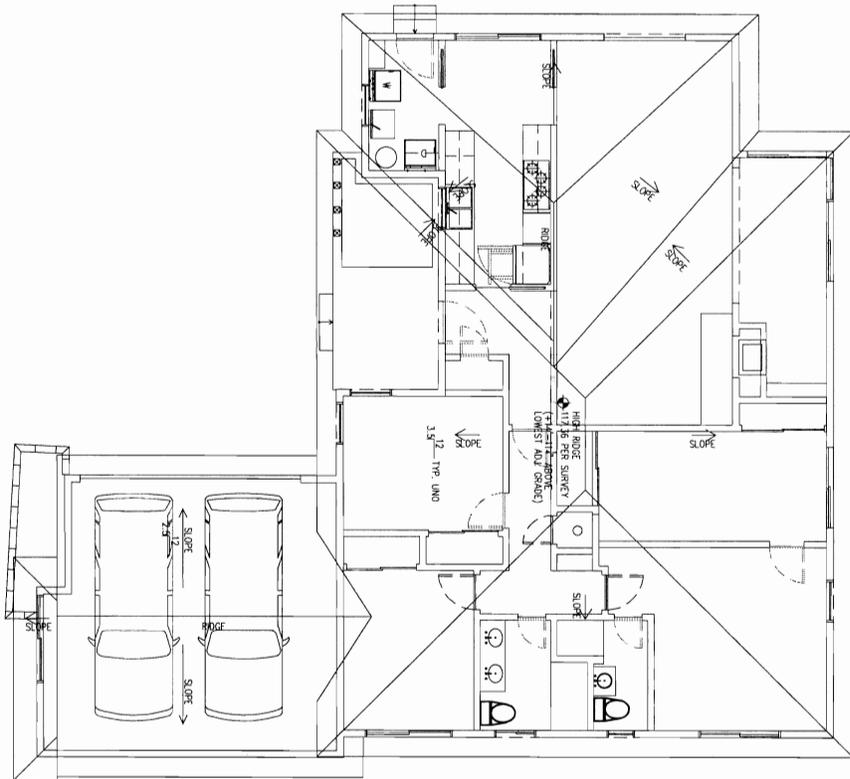
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310.373.0810 FAX  
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PROJECT NAME  
1003 DEL TOR TOR  
DATE  
MAY 4, 2010  
SCALE

SHEET TITLE  
Site Section

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**Delurgio  
 Residence**

209 Via El Toro  
 Redondo Beach  
 California 90277

Date: Description:  
 Revision:

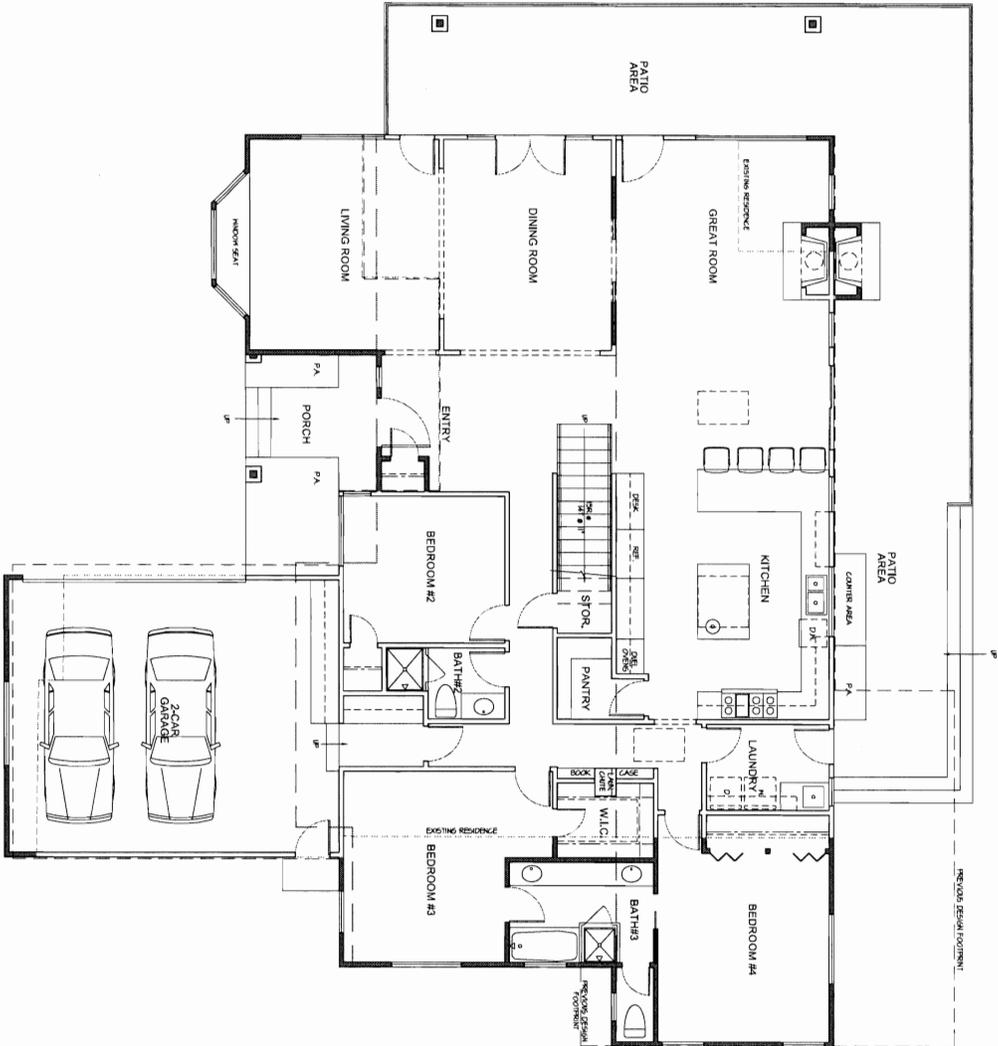
PROJECT NUMBER:  
 1003 DEL TOR TOR  
 DATE:  
 May 4, 2010

Existing  
 Floor  
 Plan

Existing Floor Plan



A-100



First Floor Plan

SCALE: 1/4" = 1'-0"

5/4/10



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**Deluglio  
Residence**

208 Via El Toro  
Redondo Beach  
California 90277

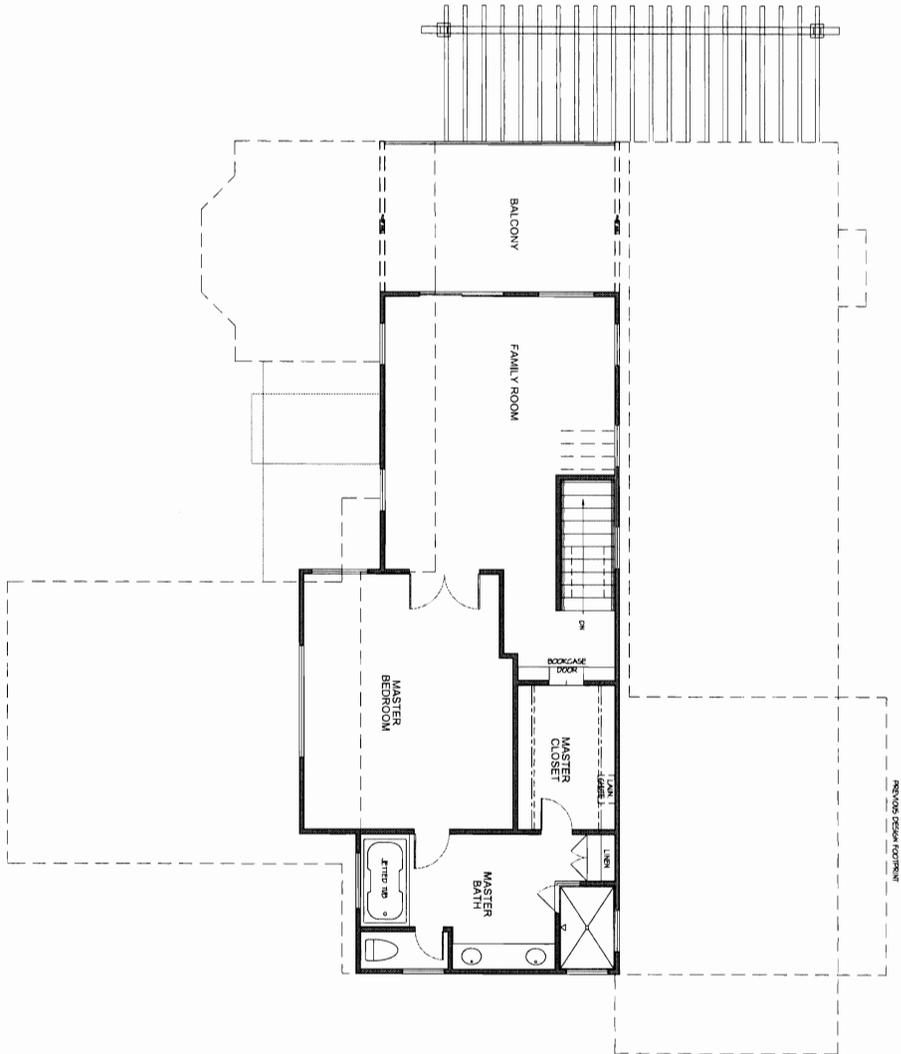
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DRAWN: [unintelligible]

PROJECT NUMBER: 1003 DEL TOR TOR  
DATE: May 4, 2010  
SCALE:

SCALE: 1/4" = 1'-0"  
**First  
Floor  
Plan**

**A-101**

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Second Floor Plan



**A-102**



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 310.373.3588 tel

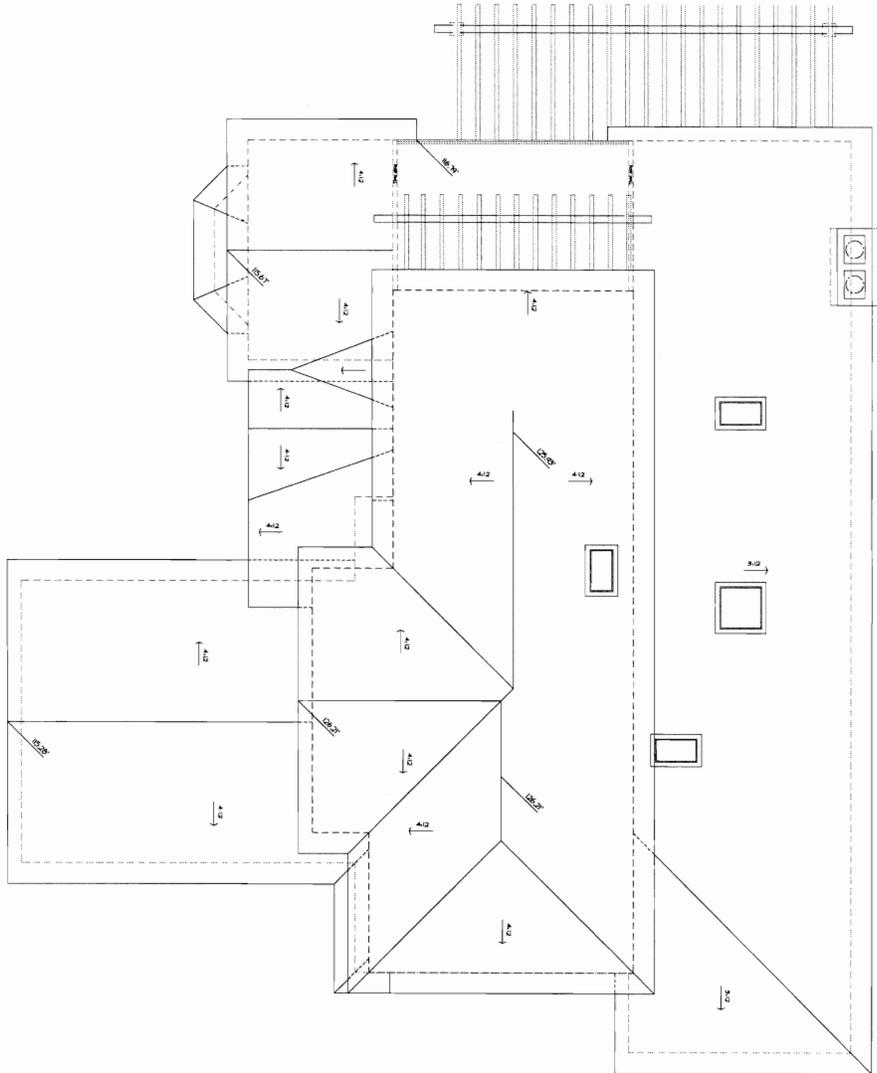
**Delurgio  
 Residence**

209 Via El Toro  
 Redondo Beach  
 California 90277

DATE: 2010.05.04  
 DRAWN: Delurgio

PROJECT NUMBER: 1003 DEL TOR TOR  
 DATE: May 4, 2010  
 SCALE:

Second Floor Plan



Roof Plan  
SCALE: 1/4" = 1'-0"



**A-103**

DATE: 05/04/2010  
 TIME: 10:58:11 AM  
 PROJECT: DELURGIO RESIDENCE  
 DRAWING: ROOF PLAN  
 SHEET: A-103

Roof Plan

PROJECT NUMBER	1003 DEL TOR TOR
DATE	May 4, 2010
TITLE	Roof Plan

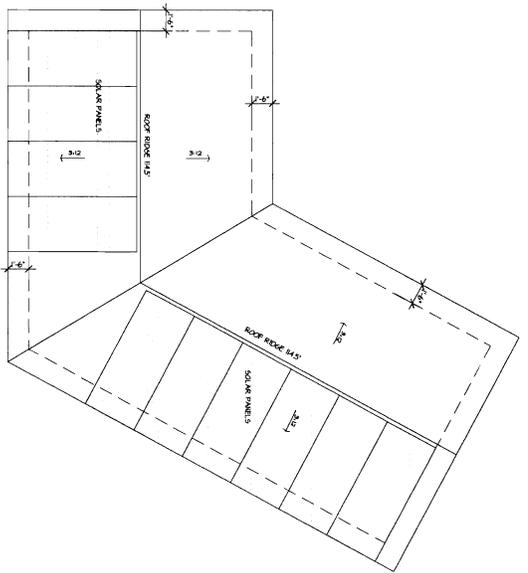
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 PROJECT: DELURGIO RESIDENCE  
 DRAWING: ROOF PLAN  
 SHEET: A-103

**Delurgio Residence**

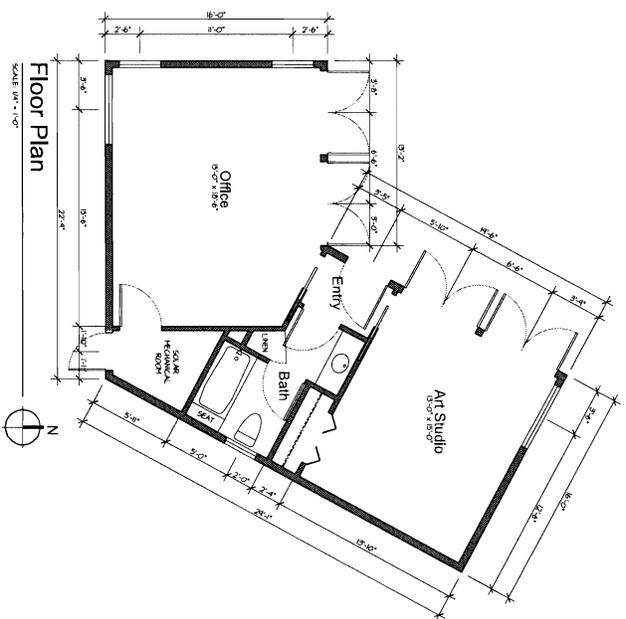
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**Roof Plan**  
SCALE: 1/8" = 1'-0"



**Floor Plan**  
SCALE: 1/8" = 1'-0"



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obeliskca@comcast.com  
310.373.0810 fax  
310.373.3588 141

**Deluglio  
Residence**

209 Via El Toro  
Redondo Beach  
California 90277

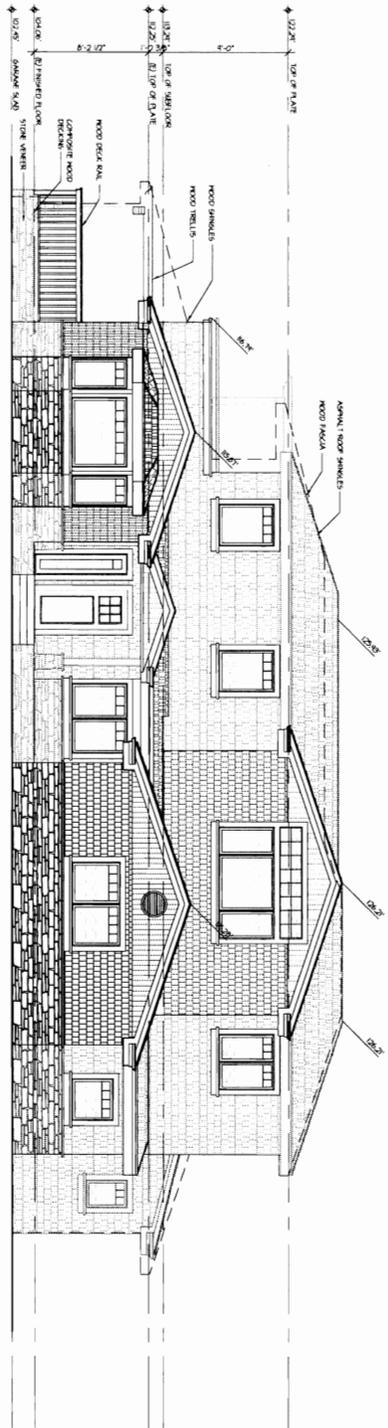
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DATE: May 4, 2010  
SHEET: [Number]

Pool Bldg.  
Floor Plan/  
Roof Plan

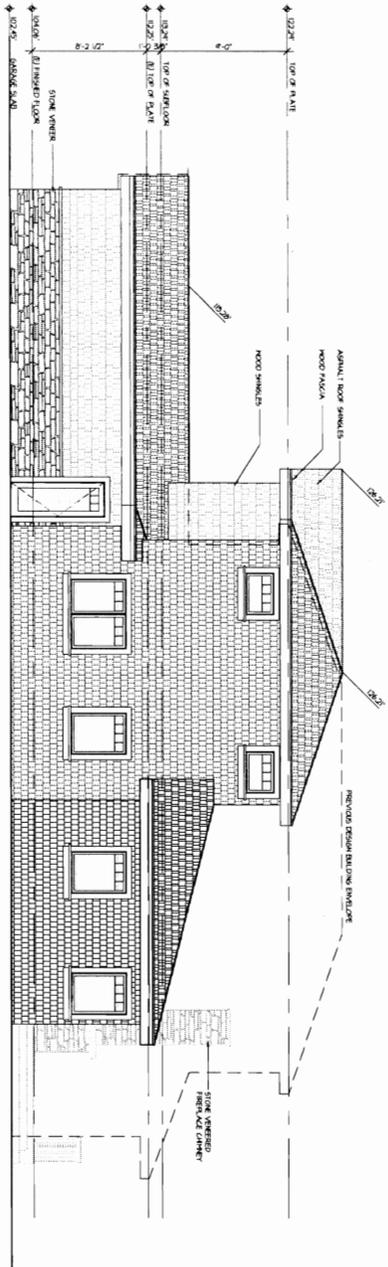
**A-104**

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West Elevation

SCALE: 1/4" = 1'-0"



South Elevation

SCALE: 1/4" = 1'-0"



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PROJECT

**Delurgio  
Residence**

209 Via El Torro  
Redondo Beach  
California 90277

DESIGNER  
DAN CHRISTOPHER

PROJECT NUMBER  
1003 DEL TOR TOR  
DATE  
May 4, 2010  
PLANS

SCALE: 1/4" = 1'-0"

**Exterior  
Elevations**

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**A-201**





**Martinez, Oscar**

**From:** Betsy Delurgio [betsy@delurgio.com]  
**Sent:** Thursday, July 21, 2011 11:38 AM  
**To:** Barnett, Gene; Brewer, Tom; Furey, Pat; Numark, Cliff; Rhilinger, Susan; Sutherland, Bill; Scotto, Frank  
**Cc:** Martinez, Oscar; Lodan, Gregg; Gibson, Jeff  
**Subject:** Please Eliminate Conditions #14 and #15 from Precise Plan PRE09-00007  
**Attachments:** City Council Letter.pdf

Dear Mayor Scotto and Members of the City Council,

Please take the time to read the attached letter.

Thank you for your time and consideration.

With appreciation,

Betsy Delurgio

July 21, 2011

RE: July 26, 2011 Hearing to Eliminate Conditions #14 and #15 from Precise Plan PRE09-00007

Dear Mayor Scotto and Members of the City Council,

This process has been extremely trying for our family and we have worked so hard over the last 4 years to address all of our neighbors concerns, specifically those of our 7 adjacent neighbors, as we attempt to improve our home. At our hearing last year we presented to you a design that had been reduced three times in order to collectively appease all of our neighbors and have least impact on them. We also presented the removal of several sections of foliage on our property that existed long before we purchased the property in 2005. Our proposed design is at .34 FAR.

We were relieved on July 20<sup>th</sup>, 2010 when the City Council understood the merits of our conforming development proposal and confirmed that our proposal was designed to cause the least intrusion on the light, air, privacy, and views of other properties in the vicinity. We appreciate that the Council had also found that a one-story proposal would be more detrimental to views of adjacent residences to the east and southeast, since that is the primary reason we proposed a scaled down two story home.

We do not understand why the final two conditions, #14 and #15, that are not related to our precise plan of development, were included. We watched in disbelief as these conditions were arbitrarily created against our property during the closed session of the hearing. These conditions greatly reduce the value of our property and were put in place to specifically benefit certain neighbors at our expense. These conditions have only served to increase the animosity against our family when all we want to do is improve our home.

Over the past 5 years, 3 of our neighbors on Camino de Encanto have subjected our family to repeated harassment, frivolous lawsuits, cussing at us in front of our children, and vandalism. Anonymous letters defaming our family, as well as a deceitful and fraudulent petition greatly distorting the facts of our proposed remodel have been distributed throughout our neighborhood. The neighbors behind this, including the leadership of the Hollywood Riviera Homeowners Association are insidious for the purpose of opposing development whether it is against our proposal or other proposed improvements in the community. I have personally witnessed all three of these neighbors trespass and vandalize our property and/or our neighbor's property by cutting down vegetation without permission from the homeowner. In each incident the vandalism was clearly being done in an effort to change the facts associated with a proposed development.

Since our City Council hearing last year:

- Mr. Kusion (523 Camino de Encanto) spoke at the first hearing to adopt resolution 2010-82 (this was later repealed and a new resolution, 2010-92, was adopted at a later hearing), and argued that condition #15 should include our entire property and not just the portion to the rear of our home. He was arguing for foliage to only grow to 4-6 feet when our home will be at least 23 feet

tall in that same area. From his vantage point, this would allow him to look directly into our children's bedrooms. Is this his intention? This is terrifying.

- On September 1<sup>st</sup>, 2010 Mr. Kusion, with Vicki Radel's (515 Camino de Encanto) permission, went into her backyard, hid behind the boundary wall that overlooks our property and videotaped my husband in our backyard. After he was observed by my husband, Mr. Kusion repeatedly shouted over the wall that he was going to put the video on YouTube. Our children had been playing in the back yard as well. Was he videotaping them? How long had he been hiding up there behind the wall with his video camera? How often has he done this? What was his intent?
- After investigating several incidents which have occurred prior to and after the last hearing involving Cindy Constantino, Vicki Radel, and Eugene Kusion, the Torrance Police recommend that we get a restraining order on our neighbor Eugene Kusion. His disturbing and harassing behavior has repeatedly invoked fear upon our family, especially our children. During the Police investigation of the crimes and incidents against our property and others, Mr. Kusion has refused to share any video or photos he has taken of our family on our property. Mr. Kusion has admitted in court however that he uses a binocular lens to photograph through our property. The City Council seeks to strip our property of all privacy through condition #15 and we cannot accept such a condition, particularly given the history.
- In March of this year, Mr. Kusion convinced Cindy Constantino (513 Camino de Encanto) to hire him as her attorney to sue us for a "nuisance", for which she was claiming \$600,000. The bushes have existed in that location for many years, and we had simply allowed the bushes she had repeatedly vandalized to grow back and restore the privacy we have had between our homes. The Constantino lawsuit was an effort to accelerate an even more restrictive version of the vegetation conditions the City Council attached to our proposed remodel. It specifically stated that the City Council had determined during our hearing that the trees were to be removed. It also sought to include liquidated damages for each instance of any vegetation exceeding the height prescribed by the City Council.
  - **PLEASE NOTE:** We have since resolved this issue directly with Cindy Constantino, and she has dismissed this lawsuit. In turn she has agreed to stop cussing at us in front of our children, has agreed to respect our property boundary, will ask her family and guests to not talk in a derogatory manner about us while our children are playing just over the wall. She also stated that she would not accept conditions as these on her own property.

We believe Mr. Kusion's behavior is retaliatory since Jim was the reporting witness of Mr. Kusion cutting down our neighbors' trees without their permission. We also have observed Cindy Constantino and her gardeners repeatedly cutting down vegetation on our property over the years.

The Torrance Police have been called about the vandalism as suggested by the Mayor, the police have investigated, filed crime reports, and the Torrance City Attorney has refused to prosecute the neighbors vandalism. Since the City has failed to prosecute our neighbors for these crimes, the Torrance police recommend that we obtain a restraining order and install surveillance cameras to protect our property and record any violations. We find this very disturbing. We have heard neighbors who have deliberately vandalized our property state that they did nothing wrong because they were not prosecuted. Failure to prosecute a crime only empowers the criminal, and we are highly disappointed that our City has failed to protect our property. Our property is now significantly damaged due to these acts of vandalism.

Following are two quotes by Dr. Tibor Machan, author of The Promise of Liberty:

“When the right to private property is not respected and not sufficiently protected, then there is something wrong with a community.”

“The right to private property is the social-political principle that adult human beings may not be prohibited or prevented by anyone from acquiring, holding and trading (with willing parties) valued items not already owned by others. Such a right is, thus, unalienable and, if in fact justified, is supposed to enjoy respect and legal protection in a just human community.”

Condition #15 rewards criminal behavior and punishes the victims of crimes. We are fearful to live in a community where such lawlessness is ignored by the office of the City Attorney, and then perpetuated by arbitrary conditions. Conditions #14 and #15 have clearly been imposed to punish us when we have done nothing but try to improve our home in conformance with the Hillside Overlay. These conditions have already harmed our property and our family, the conditions are absolutely unwarranted and unjust.

The Hillside Overlay does not include vegetation or future development. The Mayor even said this past Tuesday night that it is “impossible” to limit the heights of trees as a condition for the Richmond property. We are only improving our home to a .34 FAR. Ours would be the only home in Torrance with such diminished property rights restricting all vegetation over wall height in the backyard or any future structures over 6’. These conditions denude our entire backyard of all vegetation; prevent us from having any shade or privacy in our own home and backyard which consists of over 7,000 square feet of our property. This creates an extremely unsafe situation for us. We don’t understand why our property would be singled out like this. To not allow us any shade in our own backyard is absurd. We have two young daughters and to not allow us any privacy in our own backyard is detrimental, especially when you consider the behavior of our uphill neighbors.

Our daughters were thrilled when we bought this home with a large backyard. It is a disgrace that our children often feel unsafe playing in their own backyard because of the actions and language of these neighbors. Our children don’t deserve to feel scared when they see these neighbors giving them mean looks over our adjoining walls, or hear the f-word directed at us from these neighbors.

When Vicki Radel addressed you in our hearing last year, she spoke of our “tree trickery”. We have no idea what twisted story she told you, but we have never planted anything to the east of our home. In 2006 we planted poplar trees in a cluster to the south of our home. These trees were planted with a specific purpose to provide shade and privacy for our home, and did not block any neighbor views. We have an admission from Radel of stumping a tree on our property without permission with the intent of using that view to oppose the development of Mark Boyd’s property on Calle de Sirenas. Also, I have personally witnessed her boyfriend chain saw down a 15 foot tree in the corner of our neighbors’ property without their permission, in an effort to further expand the view into and through their property as well as our own. She could not even see our Bird of Paradise, Poplar trees, or into our bedroom windows from her residence until this act of tree vandalism occurred.

During our hearing, our architect shared with you our plan to voluntarily remove certain trees on our property. We have already cleared out most of this vegetation; however, the primary purpose of 7,000

sq. feet of our backyard is not for our neighbors to have a permanent and unnecessarily expanded view corridor that was previously non-existent, and we should never have been subjected to these highly restrictive conditions.

Since taking ownership in 2005, we have spent several thousand dollars to remove over 75% of the vegetation on our property. Our neighbors don't mention the amount of vegetation we have removed, or the views which have been greatly expanded since we took ownership. Our poplar trees were planted prior to Mr. Kusion taking residency in his mother's rental home. There was no view of our poplar trees from the Kusion residence until he cut down our neighbors' trees without permission. After he cut these trees, he (and his mother) proceeded to sue us for all trees on our property. They requested via certified letters that we cut everything down in our backyard, and even requested we cut foliage in the yard of our neighbor to the north. They continually refused our repeated offers to observe and discuss their concerns regarding vegetation which had existed on our property for decades. Despite the aggression shown to us by these neighbors, we have agreed to trim certain trees. Our agreement arrived unnecessarily in court after Mr. Kusion walked out of court ordered mediation. It should have and could have been reached without court, and between neighbors if only Mr. Kusion (the attorney) or his mother (the homeowner), had ever been willing to speak with us regarding their concerns.

The Mayor stated in our hearing last year that our neighbors now may "act as police and go to The City if the trees go over the wall height". This was his message to the very same neighbors who have harassed us, frivolously sued us, trespassed on our property, vandalized vegetation on our property and other properties during the Precise Plan process; and whom the City has failed to prosecute.

We have been told by many people, including City Officials, that we should plant Bamboo along the perimeter of our property to shield out our threatening neighbors. Other property owners have taken this tactic. We have not done so, and never intend to do this. We have always understood and respected that there are view corridors through our property, but again, our entire backyard should not be seen merely as a view corridor. Despite the fact that we are developing our property, we should certainly retain the same property rights as every other property in our community.

Our adjacent neighbor to the north, Mrs. Becker (214 Calle de Sirenas) would like us to plant trees to grow above our shared wall height for privacy between our homes. Ramzi & Sheri Ghaby (509 Camino de Encanto) have also expressed that they too would like privacy between our homes and vegetation is the perfect solution. There would be no view impact to anybody in either case if we were to do so. These conditions prohibit us from doing this and put us at risk for being sued even though there would be no view impact. When we agreed to reduce the height of the vegetation that had been previously vandalized by Cindy Constantino, she then complained that she would be losing privacy as well, and suggested that we put a pergola over our proposed barbeque area so there is added privacy between our yards. Condition #14 would unnecessarily prohibit this even though it would not impair any views, and would provide much needed privacy between us and this neighbor.

The Mayor clearly stated in our hearing last year that he wants the vegetation restricted so the neighbors on Encanto can "gain more view than any structure will restrict". The Mayor states, "They will be so much better off without any plants in the back of that property." Why? We do not understand why the City Council would make up such a thoughtless condition that burdens our private property to the benefit of specific neighbors' private property. These conditions further serve to harm the property of even

more neighbors who have specifically requested us to maintain vegetation in certain areas of our property in order to preserve privacy.

These conditions violate our constitutional right to equal protection under the law . We were asked during the hearing if we would agree to condition #12. This was added by City Council, and relates to our proposed development. It requires that we raise our sill heights to protect our neighbors' privacy in her backyard, bedroom, and living room from over 117 feet away. During the closed session of the very same hearing, the City Council then added condition #15 whereby we are stripped of any shade or privacy at all in our backyard, bedroom and living room from our neighbors, including those who demanded that the City Council alter our structure in order to preserve their own privacy. There is no question that such conditions fail to provide equal protection, and the City Council made no findings to substantiate any reason why one neighbors privacy might be more important than another. Some members of the City Council failed to recognize that condition 12 was made to preserve privacy between two homes while condition 15 would destroy privacy between the very same two homes.

Our ceiling is literally falling apart as a result of several roof leaks resulting from three hearings requiring silhouettes. Conditions #14 and #15 are unconstitutional, arbitrary and capricious, biased, and most of all encourage cruel, criminal, and harassing behavior. Our family cannot and will not live with these unwarranted and unprecedented conditions. We have gone to great expense and sacrifice to comply with the Hillside Overlay ordinance. Despite the aggressive and disingenuous acts of certain neighbors, including vandalism, harassment, and frivolous lawsuits, we have never sought to block the views which pass through our property.

Please eliminate conditions 14 and 15 from our approved precise plan. This process has taken far too long, and needs to end now. Beyond our own property, these conditions set a terrible precedent for our community, and encourage neighbors to behave horribly when families move in and want to improve old dilapidated homes. All we are asking for is the same property rights as everyone else so that our family can enjoy our home and backyard and feel safe at the same time. We are reasonable homeowners and have always respected our neighbors view interests, but there needs to be a balance to respect our property rights as well.

Sincerely,

Betsy Delurgio

Martinez, Oscar

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**From:** Jim Delurgio [jim@delurgio.com]  
**Sent:** Thursday, July 21, 2011 11:49 AM  
**To:** Gibson, Jeff; Lodan, Gregg; Martinez, Oscar  
**Cc:** Betsy Delurgio  
**Subject:** Removal of Conditions

**Attachments:** Planning Letter.pdf



Planning Letter.pdf  
(498 KB)

Attached is some information regarding the basis of our request for removal of these conditions that we hope you consider in the development of your staff recommendation.

Jim Delurgio  
(310)378-0001

209 Via el Toro  
Redondo Beach, CA 90277

July 21, 2011

Dear Mr. Gibson,

Thank you for taking the time to consider our request for removal of the conditions which were imposed upon our property by the City Council during a closed session of a public hearing regarding our PRE09-00007. We respectfully request the removal of condition #14 and condition #15 as defined in Resolution 2010 – 92. The conditions we request to be removed read as follows:

14. That no additional permanent structures over 6-feet in height shall be constructed in the rear yard; (Added by City Council)
15. That no vegetation located to the northeast of the rear building line of the main residence shall be allowed to extend above the existing property line walls along the southerly, easterly and northerly portion of the property; (Added by City Council)

We appreciate that the City Council understands the merit of our proposed project as it complies with the Hillside Overlay Ordinance.

As we have indicated during our meetings, we feel that the City Council made an error as it proceeded by imposing highly restrictive conditions #14 and #15 as conditions of approval.

These two conditions do not address any aspect of our Precise Plan PRE09-00007, and exceed the scope of review within a Precise Plan hearing which was required by the Hillside Overlay Ordinance. These highly restrictive and unprecedented conditions impose a significant and unreasonable burden and hardship to our property as they would permanently alter our property rights and significantly damage the use and enjoyment of our property.

As you are aware from our prior discussions and communications we have been informed as to the enormous economic loss to our property if we were to accept these conditions of approval and proceed with our moderately sized remodel.

Despite the fact that we have not accepted these conditions due to the enormous economic loss associated with them, we have done everything reasonably possible to demonstrate that:

1. We will follow through with the commitments made during our presentation of PRE09-00007.
2. We understand the intended result of the conditions imposed upon our property.

These conditions lack a legal foundation, they remove important private property rights, and they significantly reduced our property value the moment they were included in this decision during a closed session of the City Council. The conditions are clearly a violation of existing land use laws as they were put into place deliberately so that we could not use our property in the same manner as every other property is allowed. The inclusion of these conditions does not provide any public benefit, and we have received no offer of compensation for our loss if we were to accept these conditions and begin to restore our old dilapidated home. The conditions violate our civil liberties by failing to provide due process or equal protection under the law.

The inclusion of these conditions in the decision immediately diminished the value of our property as well as our enjoyment of our property, and has damaged every member of our family.

Removal of these unreasonable and unnecessary conditions will allow us to improve our property in accordance with Precise Plan PRE09-00007 as approved. We ask that the resolution 2010-92 for PRE09-00007 be corrected to conform with Municipal, State and Federal Laws. Land use laws were written and enacted to protect our Rights and Liberties as private property owners.

There is no malicious intent with our request for removal of these conditions from resolution 2010-92. Despite the acrimony that has been directed toward our family over the past five years and the damage done to our property by a few of our neighbors and some leaders of the Hollywood Riviera Homeowners Association, we harbor no bad intentions and only seek to move forward with our project.

In order to restore balance to this process and to restore value to our property, we must be allowed to use our property in the same manner as all other properties within our community have been allowed.

We have every expectation that approval of our request for removal of these conditions will restore order to our property and to our community.

I have included some of our legal research of which you are probably aware, but I wanted to share this with you so that you can understand the basis of our concerns as you prepare your staff recommendation regarding our request for removal of conditions #14 and #15 from PRE09-00007. Please let me know if we can be of further assistance in understating the need for removal of conditions #14 and #15.

## Torrance General Plan Land Use and Zoning Compatibility Objectives and Policies

### The Law:

*The City will work to ensure General Plan and zoning consistency by prohibiting zoning of an isolated parcel in a manner which is inconsistent or incompatible with surrounding zoning or land uses, and reviewing development proposals for consistency with all applicable land use regulations. p. LU-20*

### *Objective LU.1*

*Policy LU.1.2: Prohibit spot zoning within residential blocks*

### Our Position:

1. Conditions #14 and #15 restrict the use of our property in a manner which is inconsistent with surrounding zoning and land uses. These conditions imposed upon our property as conditions operate in the same manner as a zoning ordinance would operate. Such a zoning ordinance is inconsistent with the city's General Plan as is required by California Government Code 65000, et seq.
2. The review of our conforming development proposal PRE09-00007 is consistent with all applicable land use regulations other than the inclusion of conditions #14 and #15. Either of these conditions is considered to be spot-zoning of our property, which is prohibited.
3. These conditions were imposed individually against our property during a Precise Plan hearing required by the Hillside Overlay Ordinance, which is a zoning ordinance.

## Torrance Municipal Code: Hillside Overlay Ordinance

### The Law:

#### SECTION 91.41.5. - PRECISE PLAN.

*c) Nothing in this Article shall be construed to authorize the Planning Commission to impose conditions more restrictive than the express provisions of this Code or the California Coastal Act as to those properties lying westerly of Palos Verdes Boulevard in the Coastal Zone as defined in the California Coastal Act when so doing would render construction on any lot impossible where such construction would be possible in accordance with the Code as written.*

### Our Position:

1. Conditions #14 and #15 were imposed during our appeal of a Planning Commission decision regarding PRE09-00007.
2. Condition #14 and condition #15, exceed the provisions of Division 9, Chapter 1, Article 41 of the Torrance Municipal Code, also known as the Hillside Overlay Ordinance.
3. Condition #14 is more restrictive than the express provisions of Division 9, Chapter 1, Article 41 of the Torrance Municipal Code.
  - a. Condition #14 would certainly render construction on our property impossible where such construction would be possible in accordance with the code as written.
  - a. Condition #14 prohibits all development over 6' in the rear portion of our yard effectively condemning 7,213 square feet of our property of all reasonable use.
4. Condition #14 is absolute, prohibitive, and prejudicial. It is also unnecessary and redundant with the existing Hillside Overlay Ordinance.
  - a. Under the Hillside Overlay Ordinance, any development which meets the criteria prohibited under condition #14 would be subject to review for compliance with the Hillside Overlay Ordinance.
  - b. The forms of review include Administrative Approval, Minor Hillside Exemption, and Precise Plan hearing before the planning commission.

## Torrance City Charter

### The Law:

*Torrance Municipal Code, THE CHARTER, ARTICLE 7, SECTION 725. - ORDINANCES; WHEN REQUIRED.*

*Every act of the City Council establishing a fine or other penalty, or granting a franchise, creating a commission, board or agency, or in any way restricting or governing the use of property, and in addition thereto, every act required by the City Charter to be done by ordinance shall be by ordinance.*

### Our Position:

1. Conditions #14 and #15 violate the Charter of the City of Torrance under Article 7, Section 725 of the Torrance Municipal Code:
  - a. Condition #14 restricts the use of our property by prohibiting further development of our property and can only be enacted through an ordinance.
  - b. Condition #15 restricts the use of our property by limiting the height of vegetation on our own property can only be enacted through an ordinance.
  - c. The City Council knowingly imposed these conditions during the closed session of our public hearing, during which they were advised by the Assistant City Attorney that:
    - i. the Hillside Overlay Ordinance does not address or restrict vegetation.
    - ii. the City Council has previously determined to not establish such a tree ordinance.
    - iii. The City Council has the authority to create a tree ordinance which would apply to all properties equally
    - iv. restricting the use of an individual private property through such conditions may expose the City to a regulatory taking claim
  - d. When the City Council previously decided to limit the height of its own trees on its own property located in a park within the Hillside Overlay District, it did so through the adoption of an ordinance.

## **California Government Code Sections 65000, et seq. Planning and Zoning Law**

### **The Law:**

California Government Code Sections 65000, et seq. requires that each county and city in the state develop and adopt a General Plan. The General Plan consists of a statement of development policies and includes a diagram or diagrams and text setting forth objectives, principles standards, and plan proposals. It is a comprehensive long-term plan for the physical development of the county or city. In this sense, a General Plan is a "blueprint" which defines the specific rules governing development.

Under this law all property must be treated in accordance with all laws governing land use under the General Plan of each City.

*The actual code is very lengthy but provides additional insight into land use law in California.*

*You can read the code at the following link:*

*[http://ceres.ca.gov/planning/pzd/2000/pzd2000\\_web/](http://ceres.ca.gov/planning/pzd/2000/pzd2000_web/)*

### **Our Position:**

1. Condition #14 and #15 unreasonably restrict the use of our property in conflict with the General Plan, which is enforced for our PRE09-00007 through R-1 zoning code and the Hillside Overlay Ordinance.
2. These conditions were imposed during a hearing as required by the Hillside Overlay Ordinance. Such conditions are not supported by code as is required under the General Plan and the City Charter.

## **CALIFORNIA CONSTITUTION: ARTICLE 1 DECLARATION OF RIGHTS**

### **The Law:**

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

SECTION 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation.

### **Our Position:**

- 1) Due Process rights:
  - a. Condition #14 and condition #15 conflict directly with multiple existing laws regarding land use in the City of Torrance.
    - i. Ref: City Charter, Article 7 , Section 725 of the Torrance Municipal Code
    - ii. Ref: Division 9, Chapter 1, Article 41 of the Torrance Municipal Code
  - b. There is no tree ordinance governing land use within the City of Torrance.
    - i. The City has previously and repeatedly decided to not adopt a tree ordinance.
    - ii. The City has had many discussions that they do not want a tree ordinance that would regulate private planting unless they became a fire hazard
  - c. Tree ordinances that have worked in other cities:
    - i. Have been developed through comprehensive research and public contribution.
    - ii. Make every effort to strike a balance between conflicting interests on private property rather than administratively “clear cutting” all trees on a property at the whims of a neighbor.
    - iii. Establish penalties for tree vandalism and trespass
    - iv. Define remediation processes and protect tree owners from frivolous lawsuits.
    - v. Protect tree owners from judicial abuse and frivolous lawsuits.
  - d. The City Attorney and Planning Staff advised against the inclusion of these conditions during our hearing stating that vegetation is not controlled under the Hillside Overlay Ordinance.
- 2) Equal Protection of the Law:
  - a. Condition #14 eliminates the ability to improve 209 Via el Toro in a similar way as other properties in the immediate vicinity have been allowed, and located within the same Land Use Zoning.

- b. The City Council imposed both condition #15 and condition #12 which stand in direct, contradiction with each other.
- c. It is absolutely impossible to have a single decision which includes these two conditions and believe that we have been provided equal protection under the law.
- d. The office of the City Prosecutor has failed in every manner to protect our property and our family from the vandalism which has occurred against our property.

## **Section 1 of the 14<sup>th</sup> Amendment to the United States Constitution**

### **The Law:**

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Our Position:**

- 2) Due Process rights: *“nor shall any state deprive any person of life, liberty, or property, without due process of law.”*
  - e. Condition #14 and condition #15 conflict directly with multiple existing laws regarding land use in the City of Torrance.
    - i. Ref: City Charter, Article 7 , Section 725 of the Torrance Municipal Code
    - ii. Ref: Division 9, Chapter 1, Article 41 of the Torrance Municipal Code
  - f. There is no tree ordinance governing land use within the City of Torrance.
    - i. The City has previously and repeatedly decided to not adopt a tree ordinance.
    - ii. The City has had many discussions that they do not want a tree ordinance that would regulate private planting unless they became a fire hazard
  - g. Tree ordinances that have worked in other cities:
    - i. Have been developed through comprehensive research and public contribution.
    - ii. Make every effort to strike a balance between conflicting interests on private property rather than administratively “clear cutting” all trees on a property at the whims of a neighbor.
    - iii. Establish penalties for tree vandalism and trespass
    - iv. Define remediation processes and protect tree owners from frivolous lawsuits.
    - v. Protect tree owners from judicial abuse and frivolous lawsuits.
  - h. The City Attorney and Planning Staff advised against the inclusion of these conditions during our hearing stating that vegetation is not controlled under the Hillside Overlay Ordinance.
- 3) Equal Protection of the Law: *“nor deny to any person within its jurisdiction the equal protection of the laws”*
  - a. Condition #14 eliminates the ability to improve 209 Via el Toro in a similar way as other properties in the immediate vicinity have been allowed, and located within the same Land Use Zoning.
  - b. The City Council imposed both condition #15 and condition #12 which stand in direct, contradiction with each other. This is a clear indication of the bias shown in the inclusion of these highly restrictive conditions against our property.

- i. Condition #12 was imposed upon our Project during the open hearing to protect the privacy in the rear portion of the yard, living room and bedroom for neighbors at 513 and 515 Camino de Encanto.
    - ii. Condition #15 eliminates our own privacy in the rear portion of our yard, living room and bedroom from neighbors at 509, 513, 515, and 523 Camino de Encanto.
    - iii. Condition #15 reduces the privacy of other neighbors to the north and south of our home, as well as the privacy of the neighbors from Camino de Encanto.
  - c. During dozens of Precise Plan hearings before July 20, 2010, and in every single Precise Plan hearing since July 20, 2010 the City Council and/or Planning Commission has determined that vegetation conditions could not be imposed after they had been requested because the Hillside Overlay does not restrict vegetation.
    - i. The most recent occurrence of the City refusing to include vegetation conditions occurred during a hearing before the City Council on July 19<sup>th</sup>, 2011.
  - d. Condition #15 prohibits us from enjoying the many benefits of vegetation on our own property in a similar way as other properties which are in the immediate vicinity, and located within the same Land Use zoning.
    - i. The neighbor at 515 Camino de Encanto who requested these conditions has existing vegetation which greatly exceeds the height defined within the conditions.
    - ii. The benefits of vegetation are enjoyed by all properties throughout our City, including properties throughout the Hillside Overlay District.
    - iii. The City has repeatedly recognized the significant value of vegetation to private and public property throughout our City.

## **5<sup>th</sup> Amendment to the United States Constitution**

### **The Law:**

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

### **Our Position:**

1. As stated, we believe that conditions #14 and #15 were applied to our property in error and in excess of the jurisdiction of the City Council.
2. There is no question that the conditions reduce the value of our property and if imposed upon our property we believe that just compensation is due.

Thank you for your consideration and we hope that the staff recommendation supports our request for removal of conditions #14 and #15 from resolution 2010-92 for PRE09-00007.

Sincerely,

Jim Delurgio

**Martinez, Oscar**

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**From:** Jim Delurgio [jim@delurgio.com]  
**Sent:** Thursday, July 21, 2011 3:07 PM  
**To:** Scotto, Frank; Rhilinger, Susan; Tom Brewer; Barnett, Gene; Sutherland, Bill; Furey, Pat; Numark, Cliff  
**Cc:** Betsy Delurgio; Gibson, Jeff; Martinez, Oscar; Lodan, Gregg  
**Subject:** Request for removal of conditions

**Attachments:** Request for revision of Resolution 2010-92.pdf



Request for  
revision of Resolu...

Please review our concerns regarding the manner in which these conditions which were imposed against our property. We have never challenged the intended result of the conditions, but you are familiar with our concerns regarding the unintended consequences of such ad-hoc land use regulation being imposed individually against our property. We would certainly support a tree ordinance that applies equally to all properties in our community.

Please come by our home at any time prior to the hearing and make your own observation of how we have already improved our property. Our address is 209 Via el Toro. Upon your site visit you will find that we have moved forward in a consistent manner with what we had committed to do. Our intentions are consistent with the intended result of the conditions you have placed upon our property. It is our hope that the removal of these conditions will allow us the opportunity to proceed as planned, and restore order to our community.

Jim Delurgio  
(310)378-0001

209 Via el Toro  
Redondo Beach, CA 90277

July 21, 2011

Dear Mayor Scotto and Members of the City Council,

Thank you for taking the time to consider our request for removal of the conditions which were imposed upon our property by the City Council during a closed session of a public hearing regarding PRE09-00007 on July 20, 2011.

We respectfully request the removal of condition #14 and condition #15 as defined in Resolution 2010 – 92. The conditions we request to be removed read as follows:

14. That no additional permanent structures over 6-feet in height shall be constructed in the rear yard; (Added by City Council)

15. That no vegetation located to the northeast of the rear building line of the main residence shall be allowed to extend above the existing property line walls along the southerly, easterly and northerly portion of the property; (Added by City Council)

We appreciate that the City Council understands the merit of our proposed project as it complies with the Hillside Overlay Ordinance. As we have indicated during prior meeting and communications regarding this matter, we feel that the City Council made an error as it proceeded by imposing highly restrictive conditions #14 and #15 as conditions of approval.

We do not have an issue with what we believe to be the intended result of these conditions. Our concerns lie entirely in the unintended consequences of such poorly developed ad-hoc land use regulation being enforced individually against our property.

It is of particular concern to us is that these conditions were defined by our neighbors. Nothing in the code establishes that one neighbor shall define the land use restrictions of neighboring property. These conditions were then considered during the closed session of the hearing thus preventing any opportunity for us to express our regarding how such conditions would impact our property.

These two conditions do not address any aspect of our Precise Plan PRE09-00007, and exceed the scope of review within a Precise Plan hearing as is required by the Hillside Overlay Ordinance. Such conditions have never been imposed on any property in Torrance, and should never have been defined or considered as a legal manner in which to restrict the use of our land.

These highly restrictive and unprecedented conditions impose a significant and unreasonable burden and hardship to our property. The conditions permanently alter our property rights and significantly damage the use and enjoyment of our property.

As you are aware from our prior discussions and communications we have been informed as to the enormous economic loss to our property if we were to accept these conditions of approval and proceed with our moderately sized remodel.

Despite the fact that we have not accepted these conditions due to the enormous economic loss associated with them, we have done everything reasonably possible to demonstrate that:

1. We will follow through with the commitments made during our presentation of PRE09-00007.
2. We understand the intended result of the conditions imposed upon our property.

These conditions remove important private property rights, and they have significantly reduced our property value at the moment they were included in this decision during a closed session of the City Council. The conditions violate existing land use laws as they were put into place deliberate intent of preventing us from using our property in the same manner as every other property is allowed.

The inclusion of these conditions does not provide any public benefit, and instead only serves to provide a private transfer of economic value away from our property to other private property. We have received no offer of compensation for our loss if we were to accept these conditions and proceed with the remodel of our old dilapidated home in conformance with all laws. The conditions as currently written violate our civil liberties by failing to provide due process or equal protection under the law.

The inclusion of these conditions has already diminished the value and enjoyment of our property.

Removal of these unreasonable and unnecessary conditions will allow us to improve our property in accordance with Precise Plan PRE09-00007 as it was approved in accordance with the findings which were made. We ask that the resolution 2010-92 for PRE09-00007 be revised to conform with all Municipal, State and Federal Laws which were written and enacted to protect our Rights and Liberties as private property owners.

There is no malicious intent with our request for removal of these unnecessary conditions from resolution 2010-92. Despite the acrimony that has been directed toward our family over the past five years and the damage done to our property by a few of our neighbors and some leaders of the Hollywood Riviera Homeowners Association, we harbor no bad intentions and only seek to move forward with our project.

In order to restore balance to this process and our community, and to restore our rights and economic value to our property, we must be allowed to use our property in the same manner as all other properties within our community have been allowed.

We have every expectation that approval of our request for removal of these conditions will restore order to our property and to our community.

I have included some of our legal research of which you are probably aware, but I wanted to share this with you so that you can understand the basis of our concerns as you prepare for our hearing regarding our request for removal of conditions #14 and #15 from PRE09-00007. Please let me know if we can be of further assistance in understating our need for removal of conditions #14 and #15.

Please come visit our property before the hearing at any time. We can be reached at (310)378-0001 to schedule a time, or just drop by and take a look. I believe you will be pleased to observe the progress which we have made in good faith and alignment with the changes that we had proposed during our hearing. We hope that you recognize the reasons why we cannot accept these conditions due to the damage caused by such individualized limitations and restrictions on the use of our property.

Would you accept such conditions on your own property?

Thank you for your consideration of our request. We hope that you will have the faith and confidence in our family that we will honor your intentions if you remove conditions #14 and #15 from resolution 2010-92 for PRE09-00007. Doing so will provide the fastest and cleanest path toward the completion of our home remodel and the restoration of order to our community.

Sincerely,

[Jim Delurgio]

## **Torrance General Plan Land Use and Zoning Compatibility Objectives and Policies**

### **The Law:**

*The City will work to ensure General Plan and zoning consistency by prohibiting zoning of an isolated parcel in a manner which is inconsistent or incompatible with surrounding zoning or land uses, and reviewing development proposals for consistency with all applicable land use regulations. p. LU-20*

### *Objective LU.1*

*Policy LU.1.2: Prohibit spot zoning within residential blocks*

### **Our Position:**

1. Conditions #14 and #15 restrict the use of our property in a manner which is inconsistent with surrounding zoning and land uses. These conditions imposed upon our property as conditions operate in the same manner as a zoning ordinance would operate. Such a zoning ordinance is inconsistent with the city's General Plan as is required by California Government Code 65000, et seq.
2. The review of our conforming development proposal PRE09-00007 is consistent with all applicable land use regulations other than the inclusion of conditions #14 and #15. Either of these conditions is considered to be spot-zoning of our property, which is prohibited.
3. These conditions were imposed individually against our property during a Precise Plan hearing required by the Hillside Overlay Ordinance, which is a zoning ordinance.

## Torrance Municipal Code: Hillside Overlay Ordinance

### The Law:

SECTION 91.41.5. - PRECISE PLAN.

*c) Nothing in this Article shall be construed to authorize the Planning Commission to impose conditions more restrictive than the express provisions of this Code or the California Coastal Act as to those properties lying westerly of Palos Verdes Boulevard in the Coastal Zone as defined in the California Coastal Act when so doing would render construction on any lot impossible where such construction would be possible in accordance with the Code as written.*

### Our Position:

1. Conditions #14 and #15 were imposed during our appeal of a Planning Commission decision regarding PRE09-00007.
2. Condition #14 and condition #15, exceed the provisions of Division 9, Chapter 1, Article 41 of the Torrance Municipal Code, also known as the Hillside Overlay Ordinance.
3. Condition #14 is more restrictive than the express provisions of Division 9, Chapter 1, Article 41 of the Torrance Municipal Code.
  - a. Condition #14 would certainly render construction on our property impossible where such construction would be possible in accordance with the code as written.
  - a. Condition #14 prohibits all development over 6' in the rear portion of our yard effectively condemning 7,213 square feet of our property of all reasonable use.
4. Condition #14 is absolute, prohibitive, and prejudicial. It is also unnecessary and redundant with the existing Hillside Overlay Ordinance.
  - a. Under the Hillside Overlay Ordinance, any development which meets the criteria prohibited under condition #14 would be subject to review for compliance with the Hillside Overlay Ordinance.
  - b. The forms of review include Administrative Approval, Minor Hillside Exemption, and Precise Plan hearing before the planning commission.

## Torrance City Charter

### The Law:

*Torrance Municipal Code, THE CHARTER, ARTICLE 7, SECTION 725. - ORDINANCES; WHEN REQUIRED.*

*Every act of the City Council establishing a fine or other penalty, or granting a franchise, creating a commission, board or agency, or in any way restricting or governing the use of property, and in addition thereto, every act required by the City Charter to be done by ordinance shall be by ordinance.*

### Our Position:

1. Conditions #14 and #15 violate the Charter of the City of Torrance under Article 7, Section 725 of the Torrance Municipal Code:
  - a. Condition #14 restricts the use of our property by prohibiting further development of our property and can only be enacted through an ordinance.
  - b. Condition #15 restricts the use of our property by limiting the height of vegetation on our own property can only be enacted through an ordinance.
  - c. The City Council knowingly imposed these conditions during the closed session of our public hearing, during which they were advised by the Assistant City Attorney that:
    - i. the Hillside Overlay Ordinance does not address or restrict vegetation.
    - ii. the City Council has previously determined to not establish such a tree ordinance.
    - iii. The City Council has the authority to create a tree ordinance which would apply to all properties equally
    - iv. restricting the use of an individual private property through such conditions may expose the City to a regulatory taking claim
  - d. When the City Council previously decided to limit the height of its own trees on its own property located in a park within the Hillside Overlay District, it did so through the adoption of an ordinance.

## **California Government Code Sections 65000, et seq. Planning and Zoning Law**

### **The Law:**

California Government Code Sections 65000, et seq. requires that each county and city in the state develop and adopt a General Plan. The General Plan consists of a statement of development policies and includes a diagram or diagrams and text setting forth objectives, principles standards, and plan proposals. It is a comprehensive long-term plan for the physical development of the county or city. In this sense, a General Plan is a "blueprint" which defines the specific rules governing development.

Under this law all property must be treated in accordance with all laws governing land use under the General Plan of each City.

*The actual code is very lengthy but provides additional insight into land use law in California.*

*You can read the code at the following link:*

*[http://ceres.ca.gov/planning/pzd/2000/pzd2000\\_web/](http://ceres.ca.gov/planning/pzd/2000/pzd2000_web/)*

### **Our Position:**

1. Condition #14 and #15 unreasonably restrict the use of our property in conflict with the General Plan, which is enforced for our PRE09-00007 through R-1 zoning code and the Hillside Overlay Ordinance.
2. These conditions were imposed during a hearing as required by the Hillside Overlay Ordinance. Such conditions are not supported by code as is required under the General Plan and the City Charter.

## **CALIFORNIA CONSTITUTION: ARTICLE 1 DECLARATION OF RIGHTS**

### **The Law:**

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

SECTION 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation.

### **Our Position:**

#### 1) Due Process rights:

- a. Condition #14 and condition #15 conflict directly with multiple existing laws regarding land use in the City of Torrance.
  - i. Ref: City Charter, Article 7 , Section 725 of the Torrance Municipal Code
  - ii. Ref: Division 9, Chapter 1, Article 41 of the Torrance Municipal Code
- b. There is no tree ordinance governing land use within the City of Torrance.
  - i. The City has previously and repeatedly decided to not adopt a tree ordinance.
  - ii. The City has had many discussions that they do not want a tree ordinance that would regulate private planting unless they became a fire hazard
- c. Tree ordinances that have worked in other cities:
  - i. Have been developed through comprehensive research and public contribution.
  - ii. Make every effort to strike a balance between conflicting interests on private property rather than administratively “clear cutting” all trees on a property at the whims of a neighbor.
  - iii. Establish penalties for tree vandalism and trespass
  - iv. Define remediation processes and protect tree owners from frivolous lawsuits.
  - v. Protect tree owners from judicial abuse and frivolous lawsuits.
- d. The City Attorney and Planning Staff advised against the inclusion of these conditions during our hearing stating that vegetation is not controlled under the Hillside Overlay Ordinance.

#### 2) Equal Protection of the Law:

- a. Condition #14 eliminates the ability to improve 209 Via el Toro in a similar way as other properties in the immediate vicinity have been allowed, and located within the same Land Use Zoning.

- b. The City Council imposed both condition #15 and condition #12 which stand in direct, contradiction with each other.
- c. It is absolutely impossible to have a single decision which includes Conditions #12 and #15 and determine that we have been provided equal protection under the law.
- d. The office of the City Prosecutor has failed in every manner to protect our property and our family from the repeated acts of vandalism which has occurred against our property.

## **Section 1 of the 14<sup>th</sup> Amendment to the United States Constitution**

### **The Law:**

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Our Position:**

- 2) Due Process rights: *“nor shall any state deprive any person of life, liberty, or property, without due process of law.”*
  - e. Condition #14 and condition #15 conflict directly with multiple existing laws regarding land use in the City of Torrance.
    - i. Ref: City Charter, Article 7 , Section 725 of the Torrance Municipal Code
    - ii. Ref: Division 9, Chapter 1, Article 41 of the Torrance Municipal Code
  - f. There is no tree ordinance governing land use within the City of Torrance.
    - i. The City has previously and repeatedly decided to not adopt a tree ordinance.
    - ii. The City has had many discussions that they do not want a tree ordinance that would regulate private planting unless they became a fire hazard
  - g. Tree ordinances that have worked in other cities:
    - i. Have been developed through comprehensive research and public contribution.
    - ii. Make every effort to strike a balance between conflicting interests on private property rather than administratively “clear cutting” all trees on a property at the whims of a neighbor.
    - iii. Establish penalties for tree vandalism and trespass
    - iv. Define remediation processes and protect tree owners from frivolous lawsuits.
    - v. Protect tree owners from judicial abuse and frivolous lawsuits.
  - h. The City Attorney and Planning Staff advised against the inclusion of these conditions during our hearing stating that vegetation is not controlled under the Hillside Overlay Ordinance.
- 3) Equal Protection of the Law: *“nor deny to any person within its jurisdiction the equal protection of the laws”*
  - a. Condition #14 eliminates the ability to improve 209 Via el Toro in a similar way as other properties in the immediate vicinity have been allowed, and located within the same Land Use Zoning.
  - b. The City Council imposed both condition #15 and condition #12 which stand in direct, contradiction with each other. This is a clear indication of the bias shown in the inclusion of these highly restrictive conditions against our property.

- i. Condition #12 was imposed upon our Project during the open hearing to protect the privacy in the rear portion of the yard, living room and bedroom for neighbors at 513 and 515 Camino de Encanto.
    - ii. Condition #15 eliminates our own privacy in the rear portion of our yard, living room and bedroom from neighbors at 509, 513, 515, and 523 Camino de Encanto.
    - iii. Condition #15 reduces the privacy of other neighbors to the north and south of our home, as well as the privacy of the neighbors from Camino de Encanto.
- c. During dozens of Precise Plan hearings before July 20, 2010, and in every single Precise Plan hearing since July 20, 2010 the City Council and/or Planning Commission has determined that vegetation conditions could not be imposed after they had been requested because the Hillside Overlay does not restrict vegetation.
  - i. The most recent occurrence of the City refusing to include vegetation conditions occurred during a hearing before the City Council on July 19<sup>th</sup>, 2011.
- d. Condition #15 prohibits us from enjoying the many benefits of vegetation on our own property in a similar way as other properties which located in the same development zone and in the immediate vicinity of our property.
  - i. The neighbor at 515 Camino de Encanto who requested and were allowed to define these conditions have existing vegetation which greatly exceeds the height defined within the conditions. They also enjoy vegetation which blocks the very same view corridors for themselves and their neighbors. They have chosen to not trim their own vegetation, and instead prefer that we have no shade or privacy at all on our own property.
  - ii. The benefits of vegetation are enjoyed by all properties throughout our City, including properties throughout the Hillside Overlay District.
  - iii. The City has repeatedly recognized the significant value of vegetation to private and public property throughout our City.

## **5<sup>th</sup> Amendment to the United States Constitution**

### **The Law:**

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

### **Our Position:**

1. As stated, we believe that conditions #14 and #15 were applied to our property in error by the City Council.
2. There is no question that the conditions reduce the value of our property and if imposed upon our property we believe that just compensation is due.